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90-5588 (3)

No. 90-

ORIGINAL

In The
Supreme Court of the United States
October Term, 1990

Jake Ayers, Jr., et al.,

Petitioners

United States of America

Plaintiff-Intervenor

v.

William Allain, Governor,
State of Mississippi, et al.

Respondents

Appendix

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William E. BROCK, Secretary of Labor, Plaintiff,

v.

MECHANICSVILLE CONCRETE, INC., Defendant.

Civ. A. No. 87-0026-R.

United States District Court,
E.D. Virginia,
Richmond Division.

Nov. 23, 1987.

AMENDED ORDER

RICHARD L. WILLIAMS, District Judge.

Upon reconsideration of the order of March 26, 1987 and the opinion of this Court published at 655 F.Supp. 1454 (E.D. Va.1987) and with the consent of the defendants, the Court hereby AMENDS that order to DENY plaintiff's motion to strike the defendants' demand for a jury trial insofar as the motion relates to the issues of whether the defendants violated the Fair Labor Standards Act and, if so, how much is owed in back wages to the affected employees. However, the Court GRANTS the plaintiff's motion insofar as it relates to the issuance of an injunction barring any further violations of the Fair Labor Standards Act and to the questions of whether to award liquidated damages, and the actual amount of liquidated damages awarded. Accordingly, the order of March 26, 1987 and the accompanying opinion are hereby AMENDED to make clear that the issue of whether to award liquidated damages, and the exact amount of such liquidated damages, is not for the jury to decide, but is for the Court to determine.

The Clerk is directed to enter this order *nunc pro tunc* to June 29, 1987, and to send a copy to counsel of record.

Jake AYERS, Sr., et al., Plaintiffs,

United States of America, Plaintiff-Intervenor,

v.

William ALLAIN, Governor, State of Mississippi; W. Ray Cleere, Commissioner of Higher Education; Board of Trustees of State Institutions of Higher Learning, Betty A. Williams, President, Thomas D. Bourdeaux, Vice President, William H. Austin, Jr., Frank O. Crosthwait, Jr., Bryce Griffis, Will A. Hickman, Charles C. Jacobs, Jr., William M. Jones, John R. Lovelace, M.D., Diane Miller, Denton Rogers, Jr., Sidney L. Rushing, George T. Watson, Members; Delta State University, Kent Wyatt, President; Mississippi State University, Donald W. Zacharias, President; Mississippi University for Women, James W. Strobel, President; University of Mississippi, R. Gerald Turner, Chancellor; University of Southern Mississippi, Aubrey K. Lucas, President; et al., Defendants.

No. GC75-9-NR.

United States District Court,
N.D. Mississippi,
Greenville Division.

Dec. 10, 1987.

Black Mississippi citizens commenced class action against various officials of that state, alleging constitutional and civil rights violations from allegedly racially dual system of public higher education. The District Court, Biggers, J., held that state of Mississippi had fulfilled its affirmative duty to disestablish former de jure segregated system of higher education through good-faith adoption of race-neutral policies and procedures in areas of student admission and recruitment, faculty and staff hiring, and resource allocation.

Case dismissed.

1. Civil Rights ⇐9

Where state has previously maintained racially dual system of public higher education established by law it assumes affirmative duty to perform those policies and practices which required or contributed to separation of races; that duty is satisfied by good-faith adoption of race-neutral policies and procedures.

2. Civil Rights ⇐9

Colleges and Universities ⇐9.15

Admission policies and procedures currently used by state of Mississippi for its eight public institutions of higher education, including use of ACT test scores in conjunction with core curriculum requirement, were not adopted for racially discriminatory purposes and were reasonable, educationally sound, and racially neutral; board-established minimum ACT scores were extremely modest levels of required performance, and gap between historically white and historically black institutions as to minimum scores had narrowed considerably over time.

3. Civil Rights ⇐9

Other-race recruitment efforts at Mississippi institutions of higher education, including employment of other-race recruiters charged with specific responsibility for recruiting other-race students, frequent use of multiracial recruiting teams, and use of recruitment brochures and other university publications highlighting commitment toward other-race participation, evinced good-faith effort to recruit and retain minority students in satisfaction of state's affirmative duty to dismantle former de jure segregated system of higher education insofar as it pertained to student enrollment.

4. Civil Rights ⇐9

Differential assignment of missions and allocation of programs, funding, and facilities flowing from mission designations by state of Mississippi were not causally related to former de jure segregated system of higher education, and there was no proof that unnecessary program duplication was directly associated with racial identifiability of those institutions or that elimination thereof, though more economically efficient, would be justifiable from educational standpoint or would have substantial effect on student choice.

5. Civil Rights ⇐9

State of Mississippi had adopted racially neutral hiring policies with respect to faculty and staff at public institutions of higher education and had thus fulfilled its affirmative duty to dismantle former de jure segregated system of higher education as it pertained to faculty and staff employment.

Alvin Chambliss, Jr., Oxford, Miss., LeVern Younger, Civ. Rights Div., Educational Opportunities Litigation Section, U.S. Dept. of Justice, Washington, D.C., for plaintiffs.

Edwin L. Pittman, Atty. Gen., Ed Davis Noble, Jr., Asst. Atty. Gen., William F. Goodman, Jr., Paul H. Stephenson, III, William F. Ray, Jackson, Miss., for defendants.

MEMORANDUM OPINION

BIGGERS, District Judge.

This class action was commenced on January 28, 1975. The plaintiffs alleged that the defendants were maintaining a racially dual system of public higher education in violation of the Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1981 and 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* On April 21, 1975, the United States, by its Attorney General, filed its complaint-in-intervention pursuant to the Fourteenth Amendment, §§ 601 and 602 of Title VI and § 902 of Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h–2. The United States alleged, *inter alia*, that actions of the defendants maintained and perpetuated an unlawful dual system of higher education based on race in violation of the Fourteenth Amendment and Title VI. The plaintiffs essentially seek injunctive relief directing the defendants to bring the various components of Mississippi's public system of higher education into conformity with the

requirements of the aforementioned statutes and constitutional provisions.

I. Introduction

The plaintiffs are black citizens of the State of Mississippi, including black students attending or desirous of attending public institutions of higher learning in the State of Mississippi, black taxpayers residing in the State of Mississippi, and parents of black students attending public institutions of higher learning in the State of Mississippi. The chief defendants are the Governor of the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, and the individual members sued in their personal and official capacities, each of the institutions identified as the historically white institutions and their chief administrative officers, the State Department of Education, and the State Superintendent of Education.

All public institutions of higher learning in the state are under the management and control of the Board of Trustees of State Institutions of Higher Learning (Mississippi Constitution of 1892, § 213–A), whose authority is plenary. The defendant State Department of Education is charged with the execution of laws relating to the administrative, supervisory, and consultive services to the public schools, agricultural high schools, and junior colleges of the State of Mississippi. The defendant State Superintendent of Education is responsible for the administration, management, and control of the Department of Education, subject to the direction of the State Board of Education. Miss.Code Ann. § 37–3–5 (1972).

The private plaintiffs and the United States assert that at the time of the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the defendants had established racially separate systems of public higher education for black and white citizens of Mississippi; that the institutions designated to serve blacks were markedly inferior to the institutions established by defendants to serve whites; that from 1954 until the present defendants have maintained and perpetuated the racially dual system of public higher education through, *inter alia*, policies and practices governing student admissions, employment of faculty and administrative staff, and through the operation of historically white institutions or branches thereof in close proximity to historically black institutions; that the defendants have denied equal educational opportunity to black students and faculty by discriminating against historically black institutions with respect to, *inter alia*, institutional missions, number and level of academic programs, quality of instructional staff, allocation of land grant functions, the level and quality of physical plant, and the distribution of financial resources; and that defendants have failed to effectively dismantle the racially dual system of public higher education in Mississippi and remain today under legal obligation to eliminate the vestiges of racial dualism "root and branch."

The defendants answered the allegations of the plaintiffs and the plaintiff-intervenor by contending that a good faith nondiscriminatory and nonracial admissions and operational policy with respect to students, faculty, and staff has been implemented and maintained in the state-wide system of public higher education; and that with such a policy designed to insure equality of opportunity, the mere continued existence of institutions of higher learning with predominantly black and predominantly white student bodies and faculty does not represent a denial of equal protection, considering individual freedom of choice of all qualified students, black and white, to enroll in the colleges of their choice, and the varying educational objectives and advantages of such institutions. The defendants contend further that throughout the state-wide system there have been affirmative-action programs designed to attract qualified black students and personnel to historically white institutions and to attract qualified white students and personnel to historically black institutions; that equal protection has been and is achieved by the operation of a state-wide system dedicated to the enhancement of integrated university opportunities coupled with the goal of quality education; that a fully integrated unitary state-wide

system of higher education exists in Mississippi today wholly untainted by discriminatory actions or purposes; and that within such a system the achievement of particular proportions or percentages of desegregation must be judicially evaluated with other legitimate educational and societal interests.

Pursuant to 28 U.S.C. § 2281, a three-judge court was convened to preside over this cause. On September 17, 1975, by order issued by Judge William C. Keady (then Chief Judge of the United States District Court for the Northern District of Mississippi and acting in his capacity as managing judge of the three-judge court), a plaintiff class was certified and defined as:

> All black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.

On the same day, this court ordered the separation for trial purposes of the claims against the senior colleges and universities, that is, the Institutions of Higher Learning and the Board of Trustees of State Institutions of Higher Learning, from the claims against the sixteen public junior colleges, the Junior College Commission, and the Department of Education.

During the approximately twelve years since this case was filed until the present, considerable time and effort have been devoted by the parties, under the court's auspices, toward the consensual resolution of the many issues raised herein. After repeated good faith attempts failed to achieve a mutually satisfactory comprehensive agreement, this court[1] ordered the completion of discovery and set this cause for trial to commence on April 27, 1987. Having heard the evidence presented during a five-week bench trial, during which the court heard testimony from 71 witnesses and received 56,700 pages of exhibits, and now having maturely considered the testimony, exhibits and post-trial memoranda submitted by the parties, the court is in a position to enter its findings of fact and conclusions of law pursuant to Fed.R.Civ.P. 52.

II. Findings of Fact

A. History and Overview of the System of Higher Education

The Board of Trustees of State Institutions of Higher Learning (hereinafter referred to as "the Board of Trustees") was created by statute in 1932. In 1944 it became a constitutional board with plenary power over all Mississippi public senior colleges and universities. The Mississippi state-wide system of higher education consists of eight institutions and several entities under the jurisdiction of the Board of Trustees. The eight institutions of higher learning under the Board of Trustees' control are described as follows:

University of Mississippi

Chartered on February 24, 1844, the University of Mississippi, at Oxford, commenced its first session on November 6, 1848, with a faculty of four members. The trustees and the faculty sought to broaden the work of the institution by the creation of professional and specialized schools so as to build it into a university in fact as well as in name. In accordance with that purpose, the School of Law was opened in 1854.

Coeducation came with the admission of women students in 1882, and the first woman was added to the faculty in 1885. The first summer session was held in 1893, the School of Engineering was established in 1900, and the Schools of Education and Medicine were opened in 1903. Subsequently, the School of Pharmacy was created in 1908, the School of Commerce and Business Administration in 1917, the graduate school in 1927, and the School of Nursing in 1958.

1. In May, 1985, the three-judge court was dissolved and this cause was transferred to the present judge for further proceedings.

. The legislature mandated that the University of Mississippi serve white persons only.

Alcorn State University

Alcorn State University, initially designated as Alcorn Agricultural and Mechanical College, the oldest land grant college for blacks in the United States, had its beginning in 1830 when the Presbyterian Church established Oakland College for the education of white male students in the southwestern region of the state. The Presbyterian school closed its doors at the beginning of the civil war and upon failing to reopen after the war the college was purchased by the state and renamed Alcorn University in 1871, in honor of the late James L. Alcorn who was then Governor of the State of Mississippi.

In accordance with the Morrill Land Grant Act, the Mississippi State Legislature renamed Alcorn University as Alcorn Agricultural and Mechanical College of the State of Mississippi and designated it to serve as an agricultural college for the education of Mississippi's black youth.

Mississippi State University

In 1878, the legislature established the Mississippi Agricultural and Mechanical College and located it at Starkville, Mississippi. It was opened to students in 1880 and, in 1930, the institution was made coeducational. In 1932, its name was changed by act of the legislature to Mississippi State University of Agriculture and Applied Science. The University is organized for resident teaching, agricultural research, and agricultural extension. The School of Engineering was organized in 1902, the School of Agriculture in 1903, the School of Education in 1935, the School of Business in 1915, and the School of Arts and Science in 1956. The graduate school, organized in 1936, offers courses leading to the Master of Science degree and Doctor of Philosophy degree in the fields of study and investigation which are distinctly in the land grant program of higher education. Additional divisions and activities are: the Business Research Station, Department of Adult Education and General Extension, Department of Military Science and Tactics, State Plant Board, State Chemical Laboratory, State Seed Testing Laboratory, the Engineering and Industrial Research Stations, Agriculture Extension Service, and Agriculture Experiment Station.

Student enrollment at Mississippi State University was restricted to white persons only by act of the legislature.

Mississippi University for Women

The Industrial Institute and College was established by the legislature in 1884 as the first state-supported college established exclusively for the higher education of women in the United States. The college was located at Columbus, Mississippi and opened its first session in 1885 with Professor R.W. Jones as president. The industrial feature made it possible for women, who otherwise would not have attended college, to work their way through college. The growth of the institution was rapid and steady, almost every year seeing new buildings and new features added. In 1922, its name was changed from Industrial Institute and College to Mississippi State College for Women. Departments are maintained in liberal arts, home economics, music, art, secretarial science, teacher education, and library science. Mississippi University for Women was established by an act of the legislature approved on March 12, 1884 for the education of white women in the arts and sciences.

University of Southern Mississippi

The University of Southern Mississippi is located in Hattiesburg, Mississippi, and was established by an act of the legislature in 1910 under the name of Mississippi Normal College. Its purpose, primarily, was the training of teachers for the public schools of the state. Its first session was opened in 1912. In 1924 the name of the institution was changed to State Teachers College, and changed again by the legislature in 1940 to Mississippi Southern College, and changed again in 1962 to its present name. With the changes in name, there have been changes in function and

curricular of the institution. In 1947, graduate work in the fields of education and music were authorized and the Institute of Latin American Studies was organized. In 1957, the Board of Trustees reorganized the college, establishing schools of arts and sciences, education and psychology, commerce and business administration, and graduate studies.

Student enrollment at the University of Southern Mississippi was restricted to white persons only by act of legislature.

Delta State University

Delta State College was established in 1924 by an act of the legislature and its doors were opened for students the following year. It is located at Cleveland, Mississippi in the Delta region. It is among the youngest of the state's institutions of higher learning. Delta State University confers bachelor of science degrees in education and gives courses in music and art. It also provides a standard liberal arts program leading to the Bachelor of Arts degree.

Jackson State University

Jackson State College, a predominantly black institution located on approximately 50 acres of land in the City of Jackson, Mississippi, was transferred to the State of Mississippi in 1940 to become a training school for black teachers. The instructional program includes liberal arts and teacher education, with nursing and graduate education also offered.

Jackson State University was established by an act of legislature on May 6, 1940, for the purpose of training black teachers for the black public schools of this state.

Mississippi Valley State University

Mississippi Valley State College was established in 1946 by the legislature for the purpose of educating teachers primarily for rural and elementary black schools and to provide vocational training for black students. The college is located at Itta Bena, Mississippi. It opened its doors to students in 1950 and has grown into an institution primarily geared toward community service and adult education.

The Board of Trustees is charged with the duty to manage and control the eight public universities. The powers and duties of the Board of Trustees include, *inter alia*, control over all funds appropriated and taxes allocated by the legislature for support and maintenance of the institutions; approval of new academic programs and departments; approval of individual institutional and state-wide capital and operational budgets; approval of admission standards and procedures for each institution (U.S. Exhibit 636).

At the time the United States Supreme Court issued the decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), declaring that the "separate but equal" principle set forth in *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896) was no longer the law and that racially segregated public education was inherently unequal, Mississippi's higher education system was both separate and unequal. In 1954, the Board of Trustees issued a report entitled the "Brewton Report" which attempted to describe the relative disparities existing in the system of higher education in terms of the comparative opportunities available to white and black citizens. The report stated that, as of 1954, the educational opportunities available to black citizens at the university level were limited to teacher education, agriculture and mechanical arts, and the practical arts and trades, whereas white citizens enjoyed a full range of program offerings. The report goes on to note the efforts undertaken by the state and the Board of Trustees to improve the number and level of program offerings available to black citizens in an effort to equalize opportunities.[2]

2. In 1954, H.M. Ivy, President of the Board of Trustees, submitted to the full board and its executive secretary, on behalf of the seven board members who served as a study committee, a 369-page report entitled "Higher Education in Mississippi." A section of the report entitled "Basic Inequalities in Higher Education

At the time of the U.S. Fifth Circuit Court of Appeals decision in *Meredith v. Fair*, 298 F.2d 696 (5th Cir.1962), the Board of Trustees, contrary to the mandate of *Brown v. Board of Education*, *supra*, continued to operate a racially dual system of higher education. At least until October, 1962, enrollment at each of the eight public institutions was limited in accordance with the respective historic racial designation, that is, there were no black students attending any of the historically white universities and no white students enrolled at the historically black colleges. (U.S. Exhibit 636, pages 13–14.) The efforts of the members of the Board of Trustees and the officials of the University of Mississippi together with various state officials, including the Governor and Lieutenant Governor of the State of Mississippi, and the Mississippi Legislature to impede and deter efforts to integrate the student body at the University of Mississippi during the 1961–62 school year are well documented. *See, e.g., Meredith v. Fair*, 305 F.2d 341 (5th Cir.1962), *cert. denied*, 371 U.S. 828, 83 S.Ct. 49, 9 L.Ed.2d 66 (1962); *Meredith v. Fair*, 313 F.2d 534 (5th Cir.1962). Black students were not allowed to enroll at a historically white university under the management and control of the Board of Trustees until after the University of Mississippi was required by order of this court in *Meredith v. Fair* to admit and enroll James H. Meredith. The years in which each of the historically white universities first enrolled a black student are as follows:

University of Mississippi	1962
Mississippi State University	1965
Mississippi University for Women	1966
University of Southern Mississippi	1967
Delta State University	1966

The historically black universities first enrolled a white student in the years indicated below:

Alcorn State University	1966
Jackson State University	1969
Mississippi Valley State University	1970

(U.S. Exhibit 635).

The Board of Trustees' discriminatory policy also encompassed the hiring of faculty and staff at the eight universities. Employment practices followed the historical racial designations at each of the universities. The years in which the eight institutions first employed opposite race, full-time faculty members are as follows:

Historically White Universities

Mississippi University for Women (U.S. Exhibit 232)	1970–71
University of Mississippi (U.S. Exhibit 234)	1970–71
University of Southern Mississippi (U.S. Exhibit 236)	1970–71
Delta State University (U.S. Exhibit 229)	1973–74
Mississippi State University (U.S. Exhibit 231)	1974–75

Historically Black Universities

Alcorn State University (U.S. Exhibit 228)	1966–67
Jackson State University (U.S. Exhibit 230)	1967–68
Mississippi Valley State University (U.S. Exhibit 233)	1968–69

in the State" referred specifically to higher education as follows:

> Even greater inequalities exist in the area of higher education. It has been reported earlier that opportunities in this field are limited in the three colleges to undergraduate training in teacher education, in agriculture and the mechanical arts, and in the practical arts and trades; whereas the needs of the white population are served by five colleges, with offerings extending from a variety of undergraduate programs through extensive offerings on the graduate and professional levels. In 1952–53, there were 3,432 students enrolled in all the colleges for Negroes in the state, or 0.3% of the total Negro population; whereas in the colleges and universities for white students, including graduate students, there were enrolled 18,227 students, or 0.9% of the total white population.
>
> Of the total of $10,031,539.40 allocated to the institutions for higher education for the period 1952–54, $1,577,175.46 or 15.7% went toward the development of higher education for Negroes.... These data have been utilized to establish the point that, in the past, opportunities for the higher education of Negroes in the state have been far less than those provided for other citizens. It should be recognized, however, that there has been awareness of these inequalities on the part of the Board of Trustees of the state institutions of higher learning and the legislature of the state; and steps have been taken to lessen the gaps. Prior to the recent Supreme Court decision, the legislature adopted a public school equalization program designed to provide the same quality and quantity of education for Negroes as for whites.

Several years after the efforts to integrate the student bodies at each of the eight public universities reached their focal point, the United States Department of Health, Education and Welfare (hereinafter referred to as "HEW") attempted to extract from the State of Mississippi and the Board of Trustees a cohesive plan designed to disestablish the former *de jure* racially segregated system. In response to a March, 1969 HEW letter sent to the state requesting the submission of a desegregation plan to HEW within 120 days, the Board of Trustees submitted a "Plan of Compliance" in 1974. (U.S. Exhibit 1). On September 19, 1974, the Board of Trustees officially instructed the presidents of each university to implement the Plan of Compliance to the best of their abilities within the resources available. (U.S. Exhibit 913.) The Plan of Compliance expressed a basic objective of improving educational opportunities for all citizens emphasizing equal access and the retention of members of minority races to be enrolled and/or employed at all public colleges and universities in Mississippi. The Plan of Compliance made specific projections for opposite race student enrollment at each of the institutions of higher learning from 1973 through 1981 and promised assessment of enrollees and necessary remedial and developmental programs, in order to promote opposite race student retention. Specific projections were made also with respect to faculty and staff hiring for the eight institutions for the years 1974 through 1981. The Plan noted that special efforts would be necessary to comply with the projections for faculty and staff hiring, which comtemplated recruiting qualified undergraduate students, and further noted that additional monies would be sought from the legislature to support this program. As to academic programs, the Plan stressed the importance of desirable programs in attracting students to universities, placed a high priority on strengthening existing programs at the three historically black institutions, and promised priority for such institutions for new programs.

The Plan of Compliance also set forth mechanisms for eliminating the competition experienced by Jackson State University and Alcorn State University posed by the operation of the University Center in Jackson and the University of Southern Mississippi Center at Natchez. The Plan stated that the physical appearance of schools would be closely scrutinized and improvements would be made as funds were made available by the legislature, and further observed that funding had been distributed among the institutions in an equitable manner in the preceding four years, and special legislative appropriations would be sought in order to assist in the implementation of the projections and goals set forth in the Plan of Compliance.

Although HEW's Office of Civil Rights rejected the Board of Trustees' proposed Plan of Compliance for failure to address the separate public junior college system over which the Board possessed no authority, the Board of Trustees adopted the Plan of Compliance and required that each of the institutions under its control adopt policies and procedures designed to implement the goals and projections set forth in the Plan of Compliance. HEW's rejection of the Plan of Compliance precipitated this lawsuit.

B. Student Admission, Recruitment and Retention

1. Admission Requirements and Student Enrollment

The plaintiffs allege that black students are denied equal access to the institutions of higher learning because of the entrance requirements set up by the Board of Trustees.

On February 1, 1961, the Registrar of the University of Mississippi received an application from James H. Meredith, a black male, who sought admission to the 1961 mid-year or spring session, which commenced on February 6, 1961. (U.S. Exhibit 913.) On February 4, 1961, the Registrar informed Meredith that consideration of all pending applications had been discontinued due to alleged "overcrowded conditions." Several days later, on February 7, 1961, the Board of Trustees adopted a policy governing admission to the eight

institutions of higher learning. The new policy required that all students applying for admission to the freshman class of any of the state institutions of higher learning as of September 1, 1961, must take a test or tests prepared by the American College Testing Program (ACT). This policy also addressed acceptance of transfer students, transfers at mid-term, applications containing "false, contradictory, questionable, or uncertain data," and receipt of a "letter of admission" before presenting oneself for registration. (U.S. Exhibit 913.)

On April 20, 1961, the Board of Trustees reaffirmed the alumni voucher requirement adopted in 1954 which required the submission of at least five letters of recommendation as to good moral character from alumni of the institution(s) to which application is made. (U.S. Exhibit 912; U.S. Exhibit 64.) On August 24, 1961, the Board of Trustees adopted a more detailed admission policy. In addition to reiterating the admission requirements promulgated on February 7, this policy: (a) "authorized [each institution] to set a minimum score which applicants to such institution must each make on the American College Test [hereinafter referred to as "ACT"] in order to be eligible for consideration for admission," (b) provided that applications could not be considered "continuing," and (c) stated that applications must include "substantially complete responses made in good faith."

A short time after Meredith was denied admission to the University of Mississippi the Fifth Circuit Court of Appeals in *Meredith v. Fair*, 298 F.2d 696 (5th Cir.), *cert. denied*, 371 U.S. 828, 83 S.Ct. 49, 9 L.Ed.2d 66 (1962), required his immediate admission and struck down the alumni voucher requirement as "a denial of equal protection of the laws, in its application to Negro candidates." *Meredith*, 298 F.2d at 701–02.

In 1963, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi enacted policies requiring all freshman applicants to achieve a minimum composite ACT score of 15. (U.S. Exhibit 913.) Mississippi State University and the University of Southern Mississippi did not admit their first black pupils until 1965 and 1967, respectively.

As of the mid–1970's, the Board of Trustees had not established comprehensive admission standards on a system-wide basis that incorporated either high school achievement or specific ACT requirements. While the Board of Trustees continued to follow its policy of requiring all applicants to take the ACT, each institution was afforded wide latitude in the utilization of the test. Mississippi State University, the University of Mississippi, and the University of Southern Mississippi continued to follow a policy which contemplated achievement of a minimal score of 15 with qualified admission of students failing to achieve this score; Delta State University similarly required a 15 with probationary admission being afforded to students achieving ACT scores of 12, 13, and 14. Mississippi University for Women utilized a regression equation which included the ACT composite score as a component; and Alcorn State University, Jackson State University, and Mississippi Valley State University, while requiring all students to take the ACT, did not require a minimum score for admission. (U.S. Exhibit 039.)

Concerns arose during the 1975–76 academic year with respect to the continued appropriateness of the admission policies and procedures in place at each of Mississippi's public universities. Prompted by complaints voiced by university faculty and staff regarding the low quality and level of preparation of incoming freshmen, the Board of Trustees and its professional staff began to scrutinize the basic reading, writing and computational skills of entering freshmen. The Board of Trustees found that the complaints it had received were bolstered by the tremendous losses in enrollment occurring between the freshman and sophomore years at Alcorn State University, Jackson State University and Mississippi Valley State University which indicated that substantial numbers of incoming students were either not capable of doing college level work or were simply unprepared.

As a consequence, the Board of Trustees staff embarked upon a review of institutional admission practices. The staff found that during academic years 1973–74, 1974–75, and 1975–76 the institutions had admitted students with ACT scores as low as 1 and 2. Alcorn State University, Jackson State University, and Mississippi Valley State University had enrolled significant numbers of students with ACT scores of 9 and below. Moreover, the three major doctoral granting universities had likewise admitted appreciable numbers of students achieving ACT scores below 15. (Board Exhibit 176; Board Exhibit 177.)

The Board of Trustees attempted to address these concerns in May, 1976 by promulgating its first policy establishing minimum ACT scores for college admission to be effective the Fall of 1977. The policy stipulated that no student was to be admitted to any institution as a first-time freshman who failed to achieve an ACT score of 9. This first policy also provided that those institutions presently requiring higher minimum ACT scores were to continue those requirements. (Board Exhibit 179.) High school grades were not adopted as a component of the admission standards.

The admission standards were revised in the succeeding months to allow Mississippi State University, the University of Mississippi, and the University of Southern Mississippi to admit students with scores of 12, 13, and 14 on a probationary basis during the summer session. The policy revision provided that if such students maintained a "C" average during the summer, they were permitted to enroll in the fall semester.

In October, 1977, Dr. Walter Washington, President of Alcorn State University, requested the right to increase admission standards at that institution. Dr. Washington sought and obtained authority for step scale increases first from the 9 ACT test score to 11, then to 13, and it was hoped ultimately to a 15 ACT score by the fall of 1980. Dr. Washington simultaneously obtained, however, the right to admit students scoring 9, which is less than the otherwise applicable ACT minimum, up to a total number of students equal to 10% of the institution's previous year's fall enrollment. (Board Exhibit 179.)

The Board of Trustees again liberalized the admission standards in December, 1977. Responding to discussion that some students scoring below 15 on the ACT may nevertheless be capable of doing college work, the Board authorized Delta State University, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi to go as low as a composite score of 9 in admitting students on an exceptional basis. Such admissions were to be afforded under a "special talents" or "high risk" category.

In response to the continuing concerns of university faculty and staff regarding the quality of enrolling students, the Board of Trustees established in December of 1979 a comprehensive developmental studies program in an effort to improve the classroom performance of students identified as having deficiencies in certain subject matter and to improve retention rates. Low achievers, identified by ACT score, were required to enroll in and pass certain special remedial courses designed and implemented at each of the institutions of higher learning. Those enrolled in the remedial courses would then be permitted to "test out" of the program upon mastery of the courses.

By 1982, it appeared that the ACT minimums coupled with the developmental studies programs in place at each institution were not adequately addressing the problem of academically unprepared students enrolling in and graduating from the universities. As many as one-third of all freshman students were enrolled in remedial courses. At the same time, the Mississippi system of higher education was experiencing substantial budget cuts while expending approximately $1,000,000.00 per year for developmental studies and remedial programs.

In an attempt to positively influence the level of preparation of entering freshmen, the Board of Trustees adopted a policy which required as a prerequisite for admission the successful completion of certain essential academic courses at the high

school level. It was determined that the completion of a "core curriculum" high school course program would raise the level of academic readiness and, when assessed in light of the achievement on the ACT, would provide a reasonable degree of assurance that entering freshmen would be prepared to attempt a university level education. In July, 1982, the Board of Trustees thus adopted a high school college preparatory program known as the "core curriculum" for actual implementation in the Fall of 1986 which consisted of required courses in high school in the sciences, math and English. (Board Exhibit 441.)

In July, 1984, the Board of Trustees approved the request of Dr. James Hefner, President of Jackson State University, to raise the ACT minimum score required for automatic admission to 12, and in February, 1986 the Board of Trustees approved a similar request to raise the standard to 13. Exceptional admissions for students scoring below these minimums were preserved. (U.S. Exhibit 849; U.S. Exhibit 851.)

In April, 1986, Mississippi Valley State University also advised the Board of Trustees of its desire to enhance its image as a quality institution by raising admission standards. The Board of Trustees approved the request of Dr. Joe Boyer, President of Mississippi Valley State University, to raise the minimum ACT score for automatic admission to 13. Dr. Boyer also requested and obtained increased flexibility, that is, 10% of the previous year's total fall enrollment, for the admission of students scoring from 9 to 12. (U.S. Exhibit 852.)

Currently, the principal elements for admission to the state universities include (1) academic achievement in high school, (2) achievement on the ACT, and (3) junior college transfer procedures. All entering freshman students are required to have earned the following high school units in grades 9 through 12 in satisfaction of the core curriculum requirement: English—4 units; mathematics—3 units; sciences—3 units; social sciences—2.5 units; and required elective—1 unit. Deferral and exemption policies do exist, however, which permit student admission without satisfaction of all course requirements on an exceptional basis (such as a particularly high score on the ACT). The core curriculum requirement applies equally to all eight public universities, but the exemption policies are more liberal for the historically black institutions. No student may be admitted to a public university unless he or she satisfies the course requirements or falls under a deferral or exemption category. No particular grade point average is required—receipt of high school credit signifying course completion is all that is necessary. (Board Exhibit 183a, pages 4–6, 9, 12.)

The high school core curriculum and ACT score requirements apply only to the admission of first-time freshmen. Applicants who fail to satisfy either or both requirements may attend other accredited institutions of higher learning. Mississippi has numerous public junior colleges which offer automatic enrollment to high school graduates. Transfer from a junior college to the public universities may be made without satisfaction of the core curriculum or ACT score requirements. These students may transfer after the completion of 24 hours at a junior college with a "C" average. In some instances, students without the requisite ACT score may transfer after satisfactory completion of as few as 15 hours at the junior college level. (Board Exhibit 183a, pages 8–12).

The Board of Trustees currently requires every Mississippi resident applicant under 21 years of age to take the ACT. No student who scores below 9 on the ACT is eligible for admission as a first-time freshman to any of the eight public universities. The minimum test score required for automatic admission varies among the institutions as do the available exceptions for admission of students who fail to achieve the ACT minimum score required for automatic admission.

The Board of Trustees requires a minimum of a 15 ACT composite score for automatic admission to Delta State University, Mississippi State University, Mississippi University for Women, the University of Mississippi and the University of Southern

Mississippi. Exceptions do exist and flexibility is afforded, however, with respect to the minimum score. Each of the above institutions may enroll on an exceptional basis a number not to exceed 5% of the previous academic year's freshman class enrollment or 50 students (whichever is greater) to accommodate talented or high risk students with ACT composite scores of 9 to 14. (Board Exhibit 183a, page 9).

Mississippi University for Women has elected with the approval of the Board of Trustees to implement higher admission standards. Commencing the Fall of 1987, students seeking automatic admission to Mississippi University for Women must submit an ACT composite score of 18 or an ACT composite score of 15, 16 or 17 together with a high school grade point average of 3.0 on a 4.0 scale. Students scoring 15, 16 or 17 on the ACT without achieving a 3.0 grade point average in high school are considered for exceptional admission. No student who scores below 15 on the ACT is eligible for admission as a first-time freshman. (U.S. Exhibit 965, pages 91–99, 121–123.)

Applicants seeking automatic admission to Jackson State University must score a minimum of 13 on the ACT. Again, exceptions do exist and flexibility is afforded with respect to those applicants scoring from 9 to 12 on the ACT. As to these applicants, Jackson State University may enroll a number equivalent to 8% of the previous year's freshman class to accommodate those identified as talented or high risk students. Applicants with 9 to 12 ACT composite score who also have a 3.0 grade point average or who rank in the upper 50% of their high school graduating class are exempt from the 8% exceptional allowance. (Board Exhibit 183a.)

The Board of Trustees requires a minimum composite score of 13 on the ACT for automatic admission to Alcorn State University and Mississippi Valley State University. These institutions are likewise afforded substantial flexibility as to those applicants who score from 9 to 12 on the ACT. Applicants scoring in that range may be admitted but enrollment is limited to a number equivalent to 10% of the previous year's freshman fall term enrollment. (Board Exhibit 183a, pages 10–11.)

a. The American College Test (ACT)

Because black students on average score lower than white students, the plaintiffs allege that basing admission requirements on ACT scores discriminates unjustly against blacks.

The ACT was developed in the mid-West during the late 1950's as the nation entered into a period of substantial enrollment growth for colleges and universities. Today, every state has at least one institution making some use of the ACT data; the ACT is the predominant admissions test in some 28 states; over 20,000 educational institutions utilize the ACT assessment program; and over 1,000,000 students were tested this past year through the ACT assessment program. (Board Exhibit 162.)

The ACT assesses general educational development on a nationally standardized basis. The test shows at what educational stage the student is at the time of the test—not the innate ability or potential of the students but the present educational development. The test actually consists of a battery of four tests addressing the areas of English, mathematics, social studies, and natural sciences. These four tests measure the developed academic abilities deemed important for success in college. In addition to providing a highly relevant status report on student school achievement, the ACT, as a standardized instrument, enables educators to assess uniformly the level of academic preparation of students graduating from high schools across the state. The ACT further provides information necessary for student placement and serves as a valid predictor of academic performance during the first year of college. (Board Exhibit 162.)

The positive relationship between performance on the ACT and academic achievement during the freshman year at Mississippi universities is well established. The research services offered by ACT as well as the Board of Trustees generated tabular data correlating ACT scores and college grades. Both plainly evidence this

positive relationship. (U.S. Exhibit 946, pages 32–40; U.S. Exhibit 967, pages 75–78; Board Exhibit 275.)

Average ACT scores do differ among Mississippi black students as contrasted with Mississippi white students. Black students on the average score somewhat lower. Yet, this is not a Mississippi phenomenon but rather a national pattern. Scores on the ACT correlate with the socio-economic status of the student. It is not as much a racial correlation as an economic one. Dr. Thomas Satterfield, Deputy Superintendent of Education, State of Mississippi, testified that as more students, black and white, choose to take the core curriculum now offered by high schools in the state, the ACT score rises measurably. The studies have shown that fewer black students on a percentage basis choose to take the core curriculum than do whites, but as more blacks choose to take the curriculum, their scores are also higher than blacks and whites who choose not to take it.

Differential scores can also be found according to the sex, age, and family income of students tested. (Board Exhibit 172, pages 3, 10; U.S. Exhibit 874, pages 7–8.) Nationally, 95% of all ACT-tested students score 9 or above and over 70% of all students score 15 or above. (U.S. Exhibit 874, page 9.) Nine out of every ten ACT-tested students in Mississippi, including 80% of all black students, score 9 or above on the ACT; and students who achieve a 9 on the ACT English and social studies test are only reading at a ninth grade level. (Board Exhibit 190, pages 5–10.) Students scoring a 15 on the ACT are themselves only on the verge of a freshman reading level. (Board Exhibit 190, pages 5–10.) Thus, the Board-established minimum ACT scores are extremely modest levels of required performance. Indeed, a United States expert characterized scores of 10 and 11 as "drastically low" and certainly not reflective of a level of academic achievement for college work. (Board Exhibit 463, pages 160–61.)

Very few black students, if any, are actually denied admission to a Mississippi university as a first-time freshman for failure to achieve the minimal ACT score. Alcorn State University, Jackson State University, and Mississippi Valley State University did not deny admission to a single applicant for the fall of 1986 who scored 9 or above on the ACT. (U.S. Exhibit 960, pages 109–10.) Similarly, Mississippi State University did not deny admission to a single applicant scoring above 11 on the ACT and the University of Mississippi denied admission to only nine black freshman applicants who completed an application for admission. (U.S. Exhibit 964, pages 140, 144–45.) The University of Southern Mississippi has not admitted its full quota of students who score below 15 on the ACT in recent years due to an insufficient number of applicants in that category.

The admission standards now in place are more modest than the National College Athletic Association Proposition 48, the much publicized policy for college student athletes. The NCAA admissions policy requires achievement of specified ACT composite scores in order for student athletes to be eligible to participate in athletics. In 1986, student athletes could score as low as 13 and participate in athletics; in 1987, they may score as low as 14; but beginning in August of 1988, all student athletes must achieve an ACT composite score of 15 and at least a 2.0 grade point average on a 4.0 scale. Unlike the Board of Trustees' standards, there are no exceptions to this 15 requirement. Moreover, the current Board of Trustees policy does not require students to achieve a 2.0 grade point average.

The Board's prescribed pre-college curriculum is an appropriate measure of academic progress and achievement in high school. (U.S. Exhibit 970, pages 49–54.) There is substantial evidence that the completion of the high school course requirements has resulted in a higher level of academic preparation for those students wishing to experience the rigors of academic life at the university level. Since the implementation of the high school "core curriculum," the necessity for developmental education in college has declined significantly and ACT scores have improved dramatically. (Board Exhibit 167, pages 8–9.)

The mean ACT score in 1986 for black students who completed the high school college preparatory core curriculum was 14.3 while the mean score for those students not completing the core curriculum was only 10.8. (Board Exhibit 170.)

The modesty and reasonableness of the ACT score requirements for automatic admission are reinforced by the substantial flexibility afforded through exceptions to these minimum scores. (U.S. Exhibit 970, pages 58–59.) Each institution takes into account educational criteria in addition to ACT scores and high school courses completed in evaluating whether an applicant who has scored below the ACT threshold for automatic admission should be admitted. Grades, class rank, extracurricular activities, special talents, and recommendations of teachers and counselors are considered in attempting to identify students with reasonable prospects for academic success in college. (U.S. Exhibit 967, pages 66–71; U.S. Exhibit 961, pages 143–44; U.S. Exhibit 962, pages 145–51.)

b. Admission from Junior Colleges

Under the present policies, no applicant for first-time freshman admission to a public university is denied the opportunity to obtain a university degree for failure to achieve a particular ACT score, including the floor requirement of 9. At most, admission is deferred. Students may attend a public junior college, all of which have open admission policies, and then transfer to a senior college after successful completion of as few as 15 hours. (Board Exhibit 183A, page 8.) This procedure is not unreasonable or unduly burdensome. Indeed, thousands of students elect to attend junior colleges in Mississippi (Board Exhibit 185), and substantial numbers of these students subsequently transfer to public universities (U.S. Exhibit 965, pages 111–12, 117; U.S. Exhibit 001, page 27). In 1986, 60% of all the college students in Mississippi were enrolled in the junior colleges.

The defendants argue that the ACT requirements currently in use are reasonable and constitutional and that medical, law and engineering hopefuls should be held to at least as high admission standards as the NCAA requires of tight ends.

2. Student Recruitment

Although all eight universities have admitted "other-race" students since the 1960's (see pp. 16–17), nevertheless the historically black institutions are still predominantly black and the historically white institutions are still predominantly white. The question before the court is whether the racial identities of these universities is a result of the present free choice of the students or of official state policies and practices to promote the continued historical racial identity of each university.

Those individuals at each of the institutions with responsibility for student recruitment are responsible for recruiting other-race students as well. In addition, universities employ other-race recruiters charged with specific responsibility for the recruitment of other-race students. Other-race students, faculty, and alumni participate in the institution's recruitment efforts. Multi-racial recruiting teams are frequently used. (Board Exhibit 105, page 5; Board Exhibit 069, page 5; Board Exhibit 044, pages 6–7; Board Exhibit 129, page 18.) The universities also make use of various recruitment brochures and other university publications which have an other-race emphasis and which seek to convey the institution's commitment to other-race participation. (Board Exhibit 129, page 18; Board Exhibit 069, page 5, appendix; Board Exhibit 044, page 7; U.S. Exhibit 867, page 15; U.S. Exhibit 962, pages 19–20.) The universities also utilize news releases, promotional radio spots, public service announcements, newspaper advertisements, and slide presentations emphasizing other-race participation in university life. (Board Exhibit 033, page 4; Board Exhibit 046, page 12; Board Exhibit 071, page 3; Board Exhibit 077, page 8; U.S. Exhibit 962, page 19.)

Each of the universities initiates and maintains numerous contacts with high schools and junior colleges in their recruiting efforts. Each university strives to recruit at as many high schools and junior colleges as possible, including schools with

substantial other-race enrollment. (Board Exhibit 021 through Board Exhibit 129.) High school counselors are informed of activities of special interest to minorities (Board Exhibit 129, page 18) and campus minority recruitment conferences in which minority students and counselors are asked to make campus visits. (Board Exhibit 105, page 6; U.S. Exhibit 867, page 15.) The Board of Trustees does not permit the universities to recruit at schools which fail to execute an agreement to allow multi-racial recruiting teams. (Board Exhibit 102, page 5, U.S. Exhibit 962, page 27; U.S. Exhibit 001, page 6).

The recruitment of minority students appears to be a competitive business; both the historically white institutions and the historically black institutions continually strive to increase enrollment of other-race students. Recruitment efforts have resulted in the representation of blacks in the freshman classes at Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi in statistical parity with the representation of blacks in the qualified applicant pools. Qualified blacks and qualified whites are equally likely to apply, be accepted, and enroll at these universities. (Board Exhibit 192; Board Exhibit 193.) Black students who choose to enroll at a historically white university appear to perform well and are well received. Dr. James McComas, President of the University of Southern Mississippi, the second largest of the eight institutions, testified that a larger percentage of the black students who return as sophomores after their freshman year go on to graduate on time than do the same category of white students. Black students at the University of Southern Mississippi have been elected Homecoming Queen, Mr. University of Southern Mississippi, and to the Hall of Fame.

C. Faculty Recruitment

The statistical presence of other-race faculty at the historically black institutions is substantial and unchallenged. Approximately 32% of Alcorn State University's faculty is white, at Jackson State University 33% of the faculty is white, and at Mississippi Valley State University approximately 26% of its faculty is white. (U.S. Exhibit 742a; U.S. Exhibit 742c; U.S. Exhibit 742(f).) The defendant universities recruit and hire faculty on a nationwide basis. (U.S. Exhibit 946, page 122; U.S. Exhibit 969, pages 12–13; U.S. Exhibit 963, page 20.) The historically white institutions expend substantial affirmative efforts in an attempt to attract and employ other-race faculty, including (1) publication of position availability in the *Chronical of Higher Education*, as well as in publications specifically addressing minority interests, such as the *Affirmative Action Register, Equal Opportunity Forum*, and *The Black Scholar* (U.S. Exhibit 969, page 14; U.S. Exhibit 946, page 114; U.S. Exhibit 758), (2) publication of position availability in the specific discipline periodicals for which there is an open position (U.S. Exhibit 959, page 13), (3) mailings to and distribution of vacancy notices among the institutions of higher learning, (4) announcements placed with regional and national meetings of disciplines in which openings exist (U.S. Exhibit 758), (5) establishment of distinguished professorships, employment of visiting professors, and presentation of black guest lecturers and visiting scholars (Board Exhibit 041, page 18; Board Exhibit 104, pages 27, 32), (6) special funds allocated to minorities for salary incentives, supplementation, and support (U.S. Exhibit 946, page 115), and (7) organizing and funding committees specifically responsible for minority recruitment (Board Exhibit 104, page 26).

Recruitment of minority faculty is severely hampered by the acute shortage of supply of minority individuals having the requisite qualifications. For example, from 1977 to 1982, out of 1,067 Ph.D's awarded in chemical engineering in the United States, only 6 or less than 1% were awarded to blacks; out of 1,679 Ph.D's awarded in electrical engineering, only 29 or less than 2% were awarded to blacks; and in European history, a field included within the social sciences where blacks are generally best represented, out of 1,165 Ph.D's awarded, only 6 or less than 1%

were awarded to blacks. Moreover, business and industry keenly compete with educational institutions for the extremely limited number of blacks who hold terminal degrees. Further, the push to employ more minority faculty is a nationwide issue. Institutions throughout the country are competing for the same limited supply and finding it extremely difficult to increase the percentage of other-race faculty. Mississippi universities are at a distinct competitive disadvantage in attempting to attract, employ, and retain qualified black faculty members. Due to Mississippi's difficulties in funding higher education, faculty salaries are not competitive with many larger universities; faculty salaries tend to be several thousand dollars below national averages; and salary increases for faculty have been proportionately lower than in surrounding states where the higher education dollar is not spread among so many institutions with duplicate programs. Noncompetitive salaries are significant with respect to the recruitment of minority faculty due to the limited supply and great demand for minority faculty throughout the country which affords the black faculty member substantial leverage in financial negotiations.

The high demand for black faculty makes it difficult to retain those who are hired. Institutions outside Mississippi are frequently able to lure black faculty away with more financially attractive opportunities after the teachers have gained needed experience in Mississippi institutions. (U.S. Exhibit 969, page 10; U.S. Exhibit 963, pages 22-23.)

Since 1974, the percentage of blacks hired by Mississippi universities exceeded the black representation in the qualified labor pool. There were some 53 more blacks hired in faculty positions than one would have expected given the representation of blacks in the qualified labor pool, and this pattern holds at each of the five historically white institutions. (Board Exhibit 430; Board Exhibit 214 through Board Exhibit 217; Board Exhibit 431.) Moreover, even though the turnover rate for black faculty is higher than for whites, the representation of blacks among the faculty at each of the five historically white institutions is statistically in line with the relevant labor market for faculty employment since 1974. (Board Exhibit 207 through Board Exhibit 212.)

D. Institutional Mission & Academic Programs

1. Program Offerings and the Assignment of Institutional Missions

The plaintiffs have alleged that segregation has been perpetuated by the Board assigning the historically white universities more comprehensive undergraduate and graduate programs offering doctoral degrees than assigned to the black universities, thus discouraging white students from attending black universities.

As stated above, at the time the Board of Trustees issued the Brewton Report in 1954, higher education opportunities for blacks in the State of Mississippi were limited to the three black colleges which offered undergraduate training in the areas of teacher education, agriculture, mechanical arts, and the practical arts and trades. The white population was served by five colleges, which offered a variety of undergraduate programs complemented by extensive offerings on the graduate and professional levels. (U.S. Exhibit 29, page 148.) By the mid-1960's all five of the historically white institutions offered graduate work. Jackson State University was the only historically black institution that offered graduate work. (U.S. Exhibit 29.)

From 1967 through 1984, Jackson State University experienced a tremendous period of growth in both the number and types of academic programs offered. Academic programs were established in such fields as industrial technology, computer science, mass communications and meteorology. Five schools—the School of Business and Economics, the School of Education, the School of Liberal Studies, the School of Science and Technology and the Graduate School—were established. The Graduate School grew from a single master's degree in school administration to 35 master's degrees, 15 specialist's degrees and a doctorate in early childhood education. Accredi-

tations grew from regional accreditation by the Southern Association of Colleges and Schools to numerous national professional accreditations in such areas as teacher education, industrial technology, rehabilitation education, chemistry, social work, art design, music and public affairs and administration. (Board Exhibit 463, pages 108–09).

By 1981, the three comprehensive historically white institutions (Mississippi State University, the University of Mississippi and the University of Southern Mississippi) offered more programs than the three historically black institutions. There was comparability, however, in the number of program offerings between the regional universities of Alcorn State University and Mississippi Valley State University on the one hand and the two remaining historically white institutions, Delta State University and Mississippi University for Women. No historically black institution then and now offers a professional degree in programs such as law, medicine, dentistry, or pharmacy. (U.S. Exhibit 682.) Jackson State University is the only historically black institution that offers degree programs above the specialist level. (U.S. Exhibit 684.)

As a consequence of the 1974 Plan of Compliance and in conjunction with the academic program review process commenced in 1980, the Board of Trustees in 1981 attempted to define the role and scope of its eight public universities in a document entitled "Mission Statements." (Board Exhibit 274). The document presented a trichotomous classification scheme labeling each institution either "comprehensive," "urban," or "regional." It is common within higher education practices to classify universities according to "mission"—a term synonymous with "role and scope." Such classifications are generally based on the number and level of degree programs offered by an institution, the fields in which degrees are granted, the extent to which an institution conducts and receives funding for research, and areas of public service responsibility. The assignment of missions among institutions of higher learning is in fact necessitated by limited financial resources in the higher education budgets. All institutions cannot offer terminal degrees in all fields. Missions and special fields of excellence must be assigned.

Dr. James Millett, former President of the University of Miami (Ohio) and Chancellor of the Ohio Board of Regents, testified that every state Board struggles with the task of assigning missions to its universities—that is, every state save one. Wyoming has no such problem because it has only one state university. Dr. Millett testified, and the court so finds, that the missions assigned to the regional black colleges and the regional white colleges should depend on the financial resources of the state. According to Dr. Millett, some black students feel more comfortable and the cultural and social atmosphere for education is better for some at black colleges than at large, comprehensive universities; and that, therefore, black colleges do have a place so long as blacks also have equal access to the large, comprehensive universities and the state has sufficient funds to maintain the black colleges and their duplicating, overlapping programs of higher education.

The Board of Trustees thus designated Mississippi State University, the University of Mississippi and the University of Southern Mississippi as "comprehensive" universities which implied that these institutions offered the greater number and higher level of degree programs than did the remaining institutions. The comprehensive designation also implied that each institution was expected to offer a number of programs on the doctoral level but not in the same disciplines. Leadership responsibilities in specific disciplines have been assigned to each comprehensive university in order to promote program quality and the efficient utilization of limited resources. (Board Exhibit 274; U.S. Exhibit 683, pages 3–8.)

As the only university designated as an "urban" university, Jackson State University's role has been defined as one oriented toward service of the urban community, that is, the City of Jackson. Its mission is to instruct in research and public service with particular emphasis on the needs of

the urban community in which it is located. (Board Exhibit 274.) In 1981, and at the present time, the number and level of programs offered at Jackson State University were, and are, significantly greater than the average offered at the "regional" Mississippi institutions, Delta State University and Mississippi University for Women, but less than that offered at the "comprehensive" institutions.

Alcorn State University, Delta State University, Mississippi University for Women and Mississippi Valley State University have received the designation of "regional" universities. The "regional" designation signifies a more limited programmatic focus for these institutions, that is, each is expected to restrict course offerings to quality undergraduate instruction. Apart from Alcorn State University's land grant activities, research and public service responsibilities are to be limited. (Board Exhibit 274; U.S. Exhibit 683, pages 10–12).

2. Program Reduction and Program Duplication

In 1980, all programs below the doctoral level except certain professional programs were subjected to an intensive six-year review. (Board Exhibit 263, chapter 1 and 2.) Implementation of the review process included: (1) an exhaustive review by the Board's staff of the program review literature and instruments utilized in previous program reviews conducted across the nation; (2) compilation of review documents covering the scope of prospective reviews; (3) pilot review of a selected few programs to test the process; (4) following pilot review, documentation of operational procedures for the review (Board Exhibit 266); (5) employment of professional consultants to review each program; and (6) uniform utilization of data-gathering instruments addressing such factors as program need, program demand, student enrollment, courses taught, faculty qualifications, degree requirements, degrees awarded, employment of graduates, program relationship to institutional mission, and program costs (Board Exhibit 268; Board Exhibit 269).

As a result of this review process, the Board ordered a substantial decrease in the number of programs, across degree levels at both the historically black and the historically white institutions. The average number of programs offered at the historically white institutions decreased from 77 to 52 at the bachelor's level, 47 to 32 at the master's level, 9 to 4 at the specialist's level, and 12 to 11 at the doctoral level. With respect to the historically black institutions, the average number of programs decreased from 42 to 29 at the bachelor's level, 12 to 10 at the master's level, and 4 to 3 at the specialist's level. Overall, a total of 43 programs were eliminated at the three historically black institutions between 1981 and 1986 and a total of 227 programs were eliminated at the five historically white institutions over the same time period. (U.S. Exhibit 685, page 87; U.S. Exhibit 685(v).)

The program reductions also had the effect of reducing the amount of program duplication which had existed within the Mississippi system of higher education prior to 1981. As of 1986, however, program duplication persisted. Program duplication refers to those instances in which broadly similar programs are offered at more than one institution. A program is defined as necessarily duplicated if the presence of that program is essential for the provision of general education or specialized education in the basic liberal arts and sciences at the baccalaureate level. Program duplication and necessary duplication refer to the core programs, that is, programs that are considered to be essential. Unnecessary duplication refers to those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor's level of nonbasic liberal arts and sciences course work and all duplication at the master's level and above are considered to be unnecessary.

In assessing the amount of unnecessary program duplication existing within the Mississippi system of higher education today based upon a comparison of the historically black institutions and the historically

white institutions, disregarding institutional mission and demand for programs, it is found that at the bachelor's level, 34.6% of the 29 programs offered at the historically black institutions are unnecessarily duplicated by the historically white institutions. At the master's level, 9 of the 10 programs (or 90%) offered at the historically black institutions are unnecessarily duplicated at the historically white institutions. There also exists a substantial degree of unnecessary program duplication at the specialist level between the historically black and historically white institutions. (U.S. Exhibit 685(f)(g).) The historically white institutions as a group have lower percentages of duplication than the historically black institutions since the historically white institutions offer more programs than are offered at the black institutions. (U.S. Exhibit 685, page 11; U.S. Exhibit 685(c).)

Assessing the amount of unnecessary program duplication existing between the comprehensive versus noncomprehensive universities without consideration of the historical racial designation of the institutions, the court finds that at the bachelor's level 39.1% of all courses offered at the noncomprehensive universities are duplicated or also offered at the comprehensive universities. At the master's level, 87.9% of the programs offered at the noncomprehensive universities are also offered at the comprehensive universities.

Considering the amount of unnecessary program duplication existing between the comprehensive universities versus the historically black and the historically white noncomprehensive universities, the court finds that 32.7% of the programs offered by the historically black universities at the bachelor's level are unnecessarily duplicated by the comprehensive universities. At the master's level, 86.2% of the programs offered by the historically black universities are unnecessarily duplicated by the comprehensive universities. On the other hand, 48.9% of the programs offered by the historically white noncomprehensive universities at the bachelor's level are unnecessarily duplicated by the comprehensive universities. At the master's level, 92.9% of the programs offered by the historically white noncomprehensive universities are unnecessarily duplicated by the comprehensive universities. Thus, a higher percentage of unnecessary program duplication exists between the historically white noncomprehensive universities vis-a-vis the comprehensive universities than exists between the historically black universities and the comprehensive universities. (Board Exhibit 262.) Needless to say, this large amount of unnecessary duplication of programs at institutions which in some cases are less than 50 miles apart in sparsely populated areas is not a model of economic efficiency. For example, the unnecessary duplication of programs and administrations by two noncomprehensive universities, Delta State and Mississippi Valley State, only 35 miles apart in the rural, financially strapped Mississippi Delta, cannot be justified economically or in terms of providing quality education; and the unnecessary duplication by Mississippi State University and Mississippi University for Women, only 20 miles apart in the eastern hill section of the state, cannot be justified on an economic or efficiency basis; however, this case is not about the efficiency or the economic wisdom of higher education policies. It is about the charge of racial discrimination in higher education.

With respect to the relative quality and quantity of programs offered, library volumes, and number of faculty with doctorates and degrees from major research institutions, differences do exist among the institutions. However, these differences do not appear to be associated with traditional institutional racial designations but simply correlate with whether an institution is comprehensive or noncomprehensive. Furthermore, there is no pattern in program quality among the noncomprehensive universities with respect to race. (Board Exhibit 205; Board Exhibit 206; Board Exhibits 224–228; Board Exhibit 238; Board Exhibit 241; Board Exhibit 244; Board Exhibit 247; Board Exhibits 258–261.)

3. Off Campus Program Offerings

The plaintiffs charge that the Black universities are kept in a secondary, segregated class by the off-campus centers set up

by comprehensive universities near the campuses of the black universities, thus discouraging whites in the area from enrolling in the black institutions.

a. The University Center at Jackson

On February, 1951, the Board of Trustees approved the establishment by the University of Mississippi, in cooperation with Millsaps College, a private institution, of an off-campus center on the Millsaps campus in Jackson, Mississippi, the location of Jackson State University. Beginning in the Summer of 1951, the University of Mississippi offered credit and noncredit adult evening courses at the Millsaps Center. Enrollment at the Center during the period 1956 through 1966 ranged from a high of 975 in Fall, 1958 to a low of 284 in Fall, 1962. (U.S. Exhibit 913, stipulations 1, 2, 6.)

In April, 1961, the Board of Trustees authorized Mississippi State University to establish a resident center at Belhaven College, a private Presbyterian college in Jackson, Mississippi. During the 1964–65 academic year, 86 courses were offered and enrollment reached 960 at the Belhaven Center. In the Fall of 1964, the University of Southern Mississippi also began offering courses in cooperation with Mississippi State University at the Belhaven Center. (U.S. Exhibit 913, stipulations 8, 9, 12, 13.)

In May, 1964, the Executive Secretary of the Board of Trustees and the Director submitted to the Board of Trustees for its approval an agreement signed by officials of the University of Mississippi, Mississippi State University and the University of Southern Mississippi to establish a cooperative center in Jackson, offering an improved program of continuing education for residents of the immediate area. (Private Plaintiffs Exhibit 367, stipulation 17.) In December, 1966, the consolidation of the three Jackson extension centers was authorized by the Board of Trustees and early the next year the Mississippi University Center in Jackson was established and was to be operated jointly by the three universities. The establishment of the University Center constituted a merger of the Jackson resident centers previously operated by the three universities. The granting of degrees at the University Center was not authorized at that time. (U.S. Exhibit 913, stipulation 21).

On May 18, 1972, the Board of Trustees voted to assign management responsibilities for the University Center to Mississippi State University, the University of Mississippi and Jackson State University. On September 21 of the same year the University Center was given degree-granting status. The plaintiffs alleged that the operation of this center near Jackson State University competes with Jackson State and tends to perpetuate the alleged segregated system. The Plan of Compliance of May, 1974, proposed to diminish the competition between Jackson State University and the programs offered by the historically white universities at the University Center. At present, Jackson State University enjoys on-campus privileges at the University Center and retains veto authority over all programs offered at the Center by the remaining institutions. Only limited graduate and unique offerings of the historically white institutions remain.

b. The Natchez Center

The University of Southern Mississippi's request to establish a resident center in Natchez, Mississippi, near Alcorn State University, was approved by the Board of Trustees on June 21, 1962. The Natchez Center enrolled its first students in the Fall of 1962. The curriculum was designed to offer adult students three years of undergraduate work at Natchez and contemplated a final year of studies—either at the main campus in Hattiesburg or at any other Mississippi University upon transfer. During the Fall term of 1962, there were 198 students attending 14 classes at the Natchez Center. The Center is located approximately 40 miles from Alcorn State University. (U.S. Exhibit 912, stipulation 206; U.S. Exhibit 913, stipulation 204.)

The Board of Trustees subsequently assigned the management responsibility for the Natchez Center to the University of Southern Mississippi and approved the granting of baccalaureate degrees at the Center in the fields of elementary and sec-

ondary education and business administration—all of which were offered by Alcorn State University. The Board of Trustees, in 1972, instructed the presidents of the University of Southern Mississippi and Alcorn State University to meet and "establish the procedures whereby Alcorn [State University] will participate significantly in the instructional programs of the branch campus in Natchez." (U.S. Exhibit 913, stipulation 223.) The Plan of Compliance called for the joint participation of the two universities at the Natchez Center, making specific provision that Alcorn State University would teach 25% of the baccalaureate and master's degree courses offered at the Center. (U.S. Exhibit 913, stipulation 366.)

On February 17, 1977, the Board of Trustees transferred all responsibilities of the nursing program then offered by the University of Southern Mississippi at the Natchez Center to Alcorn State University. At present, the University of Southern Mississippi offers only noncredit extension courses at the Natchez Center.

c. The Vicksburg Resident Center

The Mississippi State University extension programs located at Vicksburg, Mississippi were recognized by the Board of Trustees as a resident center in May of 1952. (U.S. Exhibit 912, stipulation 733.) Prior to 1972, Mississippi State University offered extension classes at the Vicksburg Center as part of an in-service training program for Vicksburg public school employees. In October, 1979, Alcorn State University was authorized by the Board of Trustees to offer several courses at the Vicksburg Center. (U.S. Exhibit 912, stipulation 739.) The next year a consortium arrangement between the two schools was approved. (U.S. Exhibit 912, stipulation 737.) During the 1984–85 school year, 19 students were enrolled at the Vicksburg Resident Center, and 48 were enrolled in the center's engineering program. (U.S. Exhibit 914, page 15.)

E. Mississippi State University and Alcorn State University

The Land Grant Activities

Allegations were made by the plaintiffs that the state discriminatorily on the basis of race deprives Alcorn State University of funds and support in favor of Mississippi State University. Both of these institutions are land grant institutions. A land grant institution is defined as a college university entitled to financial and programmatic support from the federal government pursuant to a series of statutes originating with the Morrill Acts enacted by Congress in 1862 and 1890. The Morrill Act of 1862 allowed states to either sell federal land equal to 30,000 acres and place the proceeds into an endowment, or to receive scrip in lieu of land. The colleges so set up were to teach agricultural and mechanical arts, in addition to the traditional courses of study. The next major piece of legislation, entitled the Hatch–George Act, passed by Congress in 1887, referencing the Morrill–Wade Act, authorized the appropriation of funds to support agricultural research. In 1914, Congress passed the Smith–Lever Cooperative Extension Act, providing for agricultural extension for farmers. These three congressional acts defined the land grant college to be an institution that provides instruction in agriculture and mechanical arts, research in agriculture through the experimental stations, and extension of knowledge to farmers through cooperative extension programs. In 1890, Congress passed the second Morrill Act which allowed states at their discretion to designate institutions to provide educational opportunities for blacks in agriculture.

Like many states, Mississippi has two land grant universities. Mississippi State University, established in 1878, as an agricultural mechanical arts college, has, since its inception, served as the institution designated by the state to receive federal funds pursuant to the first Morrill Act. Alcorn State University serves as the state's 1890 institution, that is, the land grant institution designated by the state to receive funds pursuant to the second Morrill Act.

In 1888, the state accepted the provisions of the 1887 Hatch Experimental Station Act and gave Mississippi State University the authority to receive and expend such

funds. Alcorn State University was given no powers relative to the Hatch Act even though the congressional enabling legislation did not limit the state to granting this power only to Mississippi State University, but allowed for the inclusion of Alcorn State University. (U.S. Exhibit 913; U.S. Exhibit 695(a), page 2.) In 1916, the Mississippi Legislature accepted the provisions of the Smith–Lever Cooperative Extension Act of 1914 and gave Mississippi State University the exclusive authority to receive and expend such funds. (U.S. Exhibit 912.) The State of Mississippi was not required by the federal enabling legislation to allocate this function equally to the 1862 and 1890 institutions. One year later, the experimental station and cooperative extension programs were placed under the administrative control of Mississippi State University. (U.S. Exhibit 695(a), page 3.) In 1942, Mississippi State University was authorized to acquire land through the experimental station that was later renamed the Mississippi Agricultural and Forestry Experimental Station (hereinafter referred to as "MAFES"). It was not until 1972 that Alcorn State University was authorized by state legislation to conduct a branch experimental station at Alcorn. (U.S. Exhibit 695(a), pages 4–5.) The Alcorn Branch Experiment Station is funded by the State of Mississippi through MAFES. The Alcorn Branch Experiment Station is an organizational unit of MAFES which is in turn an organizational unit of Mississippi State University.

1. Instruction

Consistent with congressional directives, federal support for instruction in agriculture, while limited, is and has been equally divided between Alcorn State University and Mississippi State University. The state funds for instruction are allocated by the Board of Trustees according to a funding formula. The court finds that the state funding for instruction in agriculture is based on objective educational criteria, and that the financial allocations to Alcorn State University and Mississippi State University are educationally sound and reasonable and not affected by racial considerations.

2. Research

The state's program of agricultural research is heavily concentrated at Mississippi State University. The genesis of this agricultural research activity was the Hatch Act of 1887, which provided for the creation of agricultural experiment stations in connection with the first Morrill Act colleges. Since 1888, by state statute and with federal concurrence, Hatch Act funds received by the state have been assigned to Mississippi State University for support of the state's experiment station. *See* Miss. Code Ann. § 37–113–17 (1972). The McIntyre–Stennis Act of October 10, 1962 (16 U.S.C. § 582a, *et seq.*) provided for a program of forestry research at agricultural experiment stations established under the first Morrill Act and the Hatch Act. Hatch Act funds, McIntyre–Stennis Act funds, and state matching funds are expended and accounted for by MAFES. MAFES, charged by federal and state policies to discover new knowledge for public benefit, is an integral part of Mississippi State University and yet is a separately funded entity. MAFES is funded at the state level by direct legislative appropriation and not by Board of Trustees allocation of general funds for higher education.

The United States Department of Agriculture (USDA), through its Cooperative State Research Service Division (CSRS), oversees the state research program. Federal appropriations are administered by CSRS which provides direction and control to state experiment stations throughout the country, administers research on a regional basis, and oversees a national system of agricultural research. No evidence was offered to suggest any discriminatory purpose, intent or effect in connection with Mississippi's role in agricultural research. For many years, MAFES has had a working relationship with faculty and administration in agriculture at Alcorn State University. Beginning in the late 1960's and formalized in 1971, MAFES and Alcorn State University joined in an effort resulting in the creation of the Alcorn Branch of MAFES. This was "forward" legislation serving as a model for other states.

Prior to 1967 the role of 1890 institutions was principally the teaching of agriculture and related subjects. In 1967 some limited research funds were earmarked by Congress for such institutions; these appropriations were increased in 1972 and were appropriated directly to the 1890 institutions under the 1977 Farm Bill (7 U.S.C. § 3101, *et seq.*). Section 1445 of the Farm Bill appropriated funds for agricultural research at 1890 colleges and simultaneously required the director of the state agricultural experiment stations and the research director of the 1890 institutions to jointly develop a comprehensive program of agricultural research for the state. Pursuant to this directive, MAFES and Alcorn State University jointly coordinated the development of a state-wide comprehensive program; Alcorn State University also conducts its own research program and conducts research through its participation in the Alcorn Branch of MAFES. All officials directly involved in experimental station programs in Mississippi characterize the relationship between Mississippi State University and Alcorn State University as excellent. Alcorn State University has received limited state legislative appropriations for agricultural research since 1971.

3. Cooperative Extension

Cooperative extension is a cooperative venture among the USDA, land grant colleges, and county government, jointly financed by Congress, state legislatures, and county governments. Cooperative extension began with the Smith–Lever Act of May 8, 1914 (7 U.S.C. § 341, *et seq.*) and now encompasses four areas: agricultural and national resources programs; home economics or family living; 4–H youth development; and community development. The purpose of state cooperative extension is to help farm families improve their farm operations, to help farm-related businesses improve their operations, to help individuals gain knowledge to improve family living, and to improve rural community life. Since 1916, by state statute and with federal concurrence, Smith–Lever funds received by the state have been assigned to Mississippi State University. *See* Miss.Code Ann. § 37–113–19 (1972). The Mississippi Cooperative Extension Service (hereinafter referred to as "MCES"), an off-campus educational arm of Mississippi State University and separately funded by federal, state, and county governments, is the entity administering the Mississippi extension program. *See generally Wade v. Mississippi Cooperative Extension Service*, 372 F.Supp. 126 (N.D.Miss.1974). MCES is funded at the state level by direct legislative appropriation and not by Board of Trustees allocation of general funds for higher education.

The Extension Service of the USDA administers direction and control for the state program, including detailed plans of work and financial reports. No evidence was offered to suggest any discriminatory purpose, intent or effect in connection with the state's role in cooperative extension work, that is, that access to cooperative extension programs is in any way influenced by racial considerations.

For many years, MCES has operated a branch at Alcorn State University. Beginning in 1970, Congress earmarked extension funds specifically for 1890 institutions, and under the 1977 Farm Bill certain federal funds were appropriated directly to those institutions. Section 1444 of the Farm Bill appropriated funds to 1890 colleges for extension, stipulating that the work to be carried out would be submitted as part of the State Plan of Work, and Congress directed that the state director of the cooperative extension service and the extension administrator of the 1890 institution jointly develop a comprehensive program of extension for the state. This in fact occurs between MCES and Alcorn State University with the result that, with MCES cooperation, Alcorn State University conducts its own extension work serving small-scale farmers in 13 counties and participates in the development of the statewide comprehensive program. The Extension Service insures that the MCES and Alcorn State University extension programs are supplementary to one another rather than duplicative. Alcorn State University receives limited state legislative ap-

propriations for cooperative extension work.

F. Funding of the Eight Universities

The plaintiffs allege in this suit that the black citizens are deprived of equal protection of the law because of discriminatory funding of the eight universities which favors the traditionally white universities over the traditionally black universities. State funding for general support of the basic educational and operating activities of the eight universities is provided in the form of an annual lump sum appropriation to the Board of Trustees. It is the Board of Trustees' responsibility to allocate the general support appropriation among the respective institutions. Miss.Code Ann. § 37-101-15 (1972). The general support appropriation does not include funds for capital improvements, the Mississippi Agricultural and Forestry Experiment Station, or the Mississippi Cooperative Extension Service.

The Board of Trustees employs a budgeting equation referred to as the "funding formula" as the primary basis for determining the level of support for each university. Instruction-based, the Mississippi formula is tied to the educational activities of the universities. Such funding formulas are commonly used in higher education throughout the nation. The Board of Trustees has utilized the present instruction-based model since 1974.

Budgetary allocations to each university are based on the number of the previous year's student credit hours multiplied by the dollar rate per student credit hour with allowances made as to the field and level of study and mission of the institution. This figure, referred to as "investment in instruction," is deemed to be a specified percentage of an institution's total educational and general need with this percentage varying according to the mission of the institution. Following calculation of investment in instruction, other educational and general needs are determined, an appropriate inflation factor is applied to render the calculation current, and deductions are made for funds to be self-generated by the institutions, again according to mission.

The Board of Trustees determines investment in instruction by field of study for the reason that some disciplines and programs are less expensive to teach than other disciplines. Also, the Board of Trustees calculates instruction investment by level of study since lower level classes (freshman and sophomore) are less expensive than upper-level instruction (junior and senior) and substantially less expensive than graduate study. The institutional groupings are made according to mission not only because of such differences in program offerings but also due to significant distinctions in research and public service responsibilities.

In determining the cost of instruction at each of the institutions of higher learning, the Board of Trustees examines the number of programs and courses taught the previous year at a given institution, the current academic year, and the actual credit hours generated by those classes for each level of study. When the Board of Trustees receives this information from each university at the end of each academic year, Board employees then visit each campus and audit the courses to verify the accuracy of the credit hour activity report. From this information the Board of Trustees determines what the cost per credit hour is at each institution. Once cost per credit hour is established in each of the various disciplines for each level of study, the institutions are grouped by mission and then the average cost per credit hour for each group is calculated.

There are three groups for the purposes of making average cost estimates. Group I consists of the comprehensive universities. Group II is the urban university, Jackson State University. Since there is only one university with that mission designation, the Board of Trustees decided to include also the University of Southern Mississippi for the purposes of establishing an average. The Board of Trustees justifies the inclusion of the University of Southern Mississippi with Jackson State University on the basis that it is the closest to Jackson State University in size in terms of number and level of programs. Group

III includes the remaining institutions, that is, the regional universities, including Alcorn State University, Delta State University, Mississippi Valley State University, and Mississippi University for Women. An average group rate for each of these groups is thus determined and then applied to the total credit hours taught at the individual universities. Multiplying total credit hours taught times the average group rate will yield the cost in instruction at each university.

The formula group rate for instruction, as determined by the formula, is then set at a certain percentage of total need. Cost for instruction is said to represent 45% of the total need for the comprehensive universities, 47.5% for the Group II institutions, and 50% for the Group III institutions. This amount is then expanded by a certain percentage in order to cover all other functional areas, such as research, public service, student services, operations, and maintenance, and institutional support. Again, this percentage is set according to mission classification. Thus, cost in instruction for Group I institutions, representing 45% of total need, is expanded by 55% to cover the other functional areas. At the Group II institution, the cost in instruction is expanded by 52.5% and the Group III institutions' cost in instruction is expanded by 50%. The resulting figure is then expanded again to take into account inflation since the figures used in calculating institutional need are based on the previous year's data. Finally, each institution is expected to self-generate a portion of its budget. Group I institutions are expected to generate approximately 32% of their total need; these amounts are to be derived from student fees, other sales and services of educational activities, and charges for public service activities. The Group II institution is expected to self-generate 30% of its budget needs, and the Group III institutions are expected to self-generate 26% of their budget needs. Deducting the self-generated amount as described above will yield the total request for appropriations for the particular institution for the upcoming academic year.

The court heard expert witnesses testify pro and con on the issue of whether the present funding formula unconstitutionally discriminates against the predominantly black universities and therefore against the plaintiffs themselves. Studies have shown that the quality of educational institutions has not risen dramatically until they have attained considerable size—usually surpassing 10,000 full-time students. Instead of trying to divide more evenly the limited annual appropriation received by the Board of Trustees, it appears to the court that the Board would do well to build the quality and size of one of the comprehensive universities to that of universities in adjacent states which have created one leading flagship institution for the state, e.g., University of Arkansas, University of Tennessee, and Louisiana State University. Then the students of the state, black and white, would have educational opportunities available to them from at least one leading research university which do not now exist with scattered competing institutions clamoring for larger parts of the limited lump sum appropriation. The state is not required by the United States Constitution to maintain even a single university, and *a fortiori*, not eight. Of course if a state chooses to create and maintain public universities it must fund and administer them without regard to race or sex. *MUW v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982). The establishment of a large, comprehensive, research institution which is open to all the qualified citizens of the state without consideration of race is a course of action not in contradiction to the Constitution or the laws of the United States. Politically, to channel the amount of money from the annual appropriation necessary to develop and support a flagship university, although economically and educationally advantageous to the state, would be an unpopular action with some alumni and in the areas served by the other universities if it would decrease the funding of the other seven. The Board of Trustees has recognized that the students of this state would have higher quality educational opportunities if funds are taken from institutions whose continued fund-

ing is economically illogical and use them in improving the larger comprehensive institutions;[3] however, the legislature has not agreed on a course of action in which the economic and educational advantages clash with the political considerations.

The funding formula does not treat the predominantly black institutions inequitably. Mississippi Valley State University, for example, benefits substantially under the institutional groupings. The grouping of Mississippi Valley State University with the other three regional universities, particularly Delta State University, has given Mississippi Valley State University significantly higher funds for instruction than the sums actually expended for instruction. Conversely, Delta State University has been consistently funded at rates below sums actually expended for instruction. (Board Exhibits 361–364.) Jackson State University has also greatly benefited from having been grouped with the University of Southern Mississippi. (Board Exhibits 361–364.)

The Board of Trustees has on occasion departed from the pure formula allocation. Such departures, however, have benefited the predominantly black institutions. For the period 1981–82 through 1986–87, Mississippi Valley State University received $1,518,923.00, Alcorn State University received $1,101,167.00, and Jackson State University received $552,759.00 more than otherwise would have been received under a pure formula allocation. During the same time period Mississippi State University received some $4,134,846.00 less, and the University of Southern Mississippi $3,775,936.00 less than called for by the formula. (Board Exhibit 360.)

Comparing Mississippi institutions with their peers in surrounding states, the court finds that the three comprehensive universities were under-funded by more than 15% when compared to institutions of similar mission in the Southeast region. Jackson State University, however, was 9% above the regional average for like institutions, and the four regional institutions in Mississippi were more than 25% above the regional average for institutions of comparable mission in other states. Similar patterns have prevailed in Mississippi at least over the past decade. The plaintiffs have argued and alumni have called for a change in the funding of the universities which would allow the smaller predominantly black universities to "keep up" with or "compete" with the larger predominantly white universities. The court notes that even respected newspapers have editorialized in favor of this position.[4] Such an argument is misplaced. A regional institution has a mission, a purpose, that is not designed for the "keeping-up" with or "competing" with the comprehensive universities. The funding allocation to the Board of Trustees is of a limited amount. The comprehensive universities must of necessity receive the larger amounts if they are to remain capable of carrying out their missions. Authorities advocate that they should receive more dollars per student. As long as the larger, comprehensive universities are open to all qualified students, both black and white students gain.

G. Facilities

From 1964–65 to 1984–85, statewide full-time equivalent enrollment at the eight universities nearly doubled to a peak of approximately 45,000 students. (U.S. Exhibit 836(b).) Enrollment growth was accompanied by a substantial increase in campus space and plant investment. (U.S. Exhibit 835, page 27; U.S. Exhibit 836(e); U.S. Exhibit 836(1).) The state's response to the increase in enrollment over this twenty-year period was inconsistent in the early years in the sense that a disproportionate share of the funds allocated for faculty expansion was received by the historically white institutions. In more recent years, significant expenditures have been made to increase the physical facilities at the histor-

3. The Board announced its decision in 1986 to close Mississippi University for Women, Mississippi Valley State University, the Veterinary School at Mississippi State University, and the Dental School at the University of Mississippi.

4. *See The Clarion Ledger, Jackson Daily News*, August 21, 1987 Editorial.

ically black institutions. Despite having only approximately 25% of the total system-wide enrollment, the historically black institutions received 39% of the state appropriations from 1970 through 1980 for new construction, and from 1981 through 1986 received 51% of such funds. (Board Exhibit 304, page 1; Board Exhibits 326–330; Board Exhibit 344.) During the period 1981 through 1986, the state building commission allocated over 30% of all major repair and renovation appropriations to the predominantly black institutions. (Board Exhibits 331–338.)

The expenditure of substantial funds by the State of Mississippi in response to the increasing student enrollment in the higher education system resulted in a significant expansion of campus facilities at each institution. Campus space may be measured either in terms of gross square feet or net assignable square feet. Gross square feet is an architect's term measuring the outline of the floors of a building and adding these to reach total square footage. Net assignable square feet is a smaller number than gross square feet, representing the amount of space available for functional purposes and would exclude vestibules, halls, closets, etc. The total increases in campus gross square feet from 1960–61 to 1984–85 range from 682,000 gross square feet at Delta State University to almost 3.3 million gross square feet at Mississippi State University. During the first five years (1960–65), Alcorn State University, Jackson State University, and the University of Southern Mississippi achieved a growth rate of 100%. In the most recent five-year period (1980–85), additions to plant range from 0 to 5 percent, with the exception of Jackson State University, which achieved a growth rate of 21.5 percent. Overall, space on the eight university campuses expanded from 6.5 million gross square feet in 1960 to 18.2 million gross square feet today and replacement value (in constant dollars) increased from approximately $200,000,000.00 to over $920,000,000.00. (U.S. Exhibit 836.)

Perhaps the most useful indicator of facilities resources is the amount of functional or net square feet of space per full-time equivalent student. The University of Southern Mississippi, a historically white comprehensive institution, has the smallest amount of net square feet per full-time equivalent student. When all eight institutions are ranked, the historically black institutions rank second, third, and seventh in total square feet per full-time equivalent. (U.S. Exhibit 836(k).) From the way in which the eight Mississippi universities fall within the rankings, the court finds that there is no correlation between the amount of campus space and the historical racial designation of the institutions.

Over the past 25 years, the historically black institutions consistently had a higher increase than did the historically white institutions in gross square feet and net square feet added. The historically black institutions experienced increases in total space of 381% while the historically white institutions experienced increases of 150%. The historically black institutions increased by 76% in gross square feet per student while historically white institutions increased 26%.

The physical plant of the higher education institution is a basic tool to facilitate its educational programs. There is a close relationship between facilities and the development or expansion of academic programs. A recent publication by the Carnegie Foundation reported that 62% of the students surveyed stated that facilities were the most important factor in their interest in an institution. The particular mix of facilities found at a given institution defines its "character." Objectively, one might include such factors as the age and construction type and design of campus buildings, their condition, ease of access, extent of land holdings, ability to expand, and visual images in defining institutional character. The subjective factors include the opinions of the academic community and the media and the opinions of parents, alumni, and students.

The character of the historically black institutions in 1954 was acknowledged to be inferior or unequal to that of the historically white institutions at that time. The facilities at the historically black institutions in 1954 were deemed to be adequate

for undergraduate education. In 1986, the character of Jackson State University changed to that of what would be expected at a research university with limited ability to conduct research at the graduate level. With respect to the present-day character of Alcorn State University and Mississippi Valley State University, the court finds facilities commensurate with institutions with an undergraduate mission.

Mr. Richard Dober of Cambridge, Massachusetts, a noted lecturer and author of over fifty books on campus planning and adviser to China on educational facilities, studied the physical facilities of the eight institutions in Mississippi. Mr. Dober testified he found no correlation between the racial identity of the institutions and the quality of the facilities at the institutions and the court so finds.

H. Governance

The Board of Trustees of the Institutions of Higher Learning

The Board of Trustees consists of thirteen members appointed by the governor, with the advice and consent of the Mississippi Senate. Twelve members are appointed to twelve-year terms, in groups of four, every four years. Ten of the twelve members are to be appointed from and must be residents of the several designated districts (Congressional or Mississippi Supreme Court Districts), and two are to be appointed from the state at large. The thirteenth member is appointed "for the University of Mississippi ... and shall have a vote only in matters pertaining to the University...." This member, known as the Trustee for the LaBauve Fund, serves a four-year term.[5] (Miss. Const. Sec. 213–A (1890); U.S. Exhibit 1, page i; U.S. Exhibit 636, page 1). There are no stated written criteria for selection of board members. Those appointed to serve on the Board of Trustees have represented various professional backgrounds.

No black person was appointed to the Board of Trustees from 1932 through 1971. The first black person to serve on the Board of Trustees, Dr. Robert Walker Harrison, was appointed in 1972. Since that appointment, three additional blacks have been appointed and three blacks presently serve on the Board. Elected by the membership of the Board of Trustees, blacks have served as president and vice-president of the Board. Blacks have also served as chairmen of numerous Board committees. A close working relationship and strong sense of collegiality exist among white and black Board members.

The Board of Trustees selects an executive secretary who, *inter alia*, employs necessary professional staff, subject to Board approval. (U.S. Exhibit 636, page 8.) The Board's first two black professional staff members were not employed until 1974. (U.S. Exhibit 936, page 36.) At present, the staff responsible for the day-to-day operations of the Board of Trustees consists of twenty-three persons, six of whom are black. Moreover, four of the six blacks on this staff are professionals. Apart from the maintenance staff, the other major staff segment employed by the Board of Trustees is responsible for overseeing the guaranteed student loan program. This group consists of approximately fifty persons, seventeen of whom are black.

III. Conclusions of Law

A. General

The private plaintiffs' claims are based upon the Thirteenth and Fourteenth Amendments, 42 U.S.C. § 1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, 34 C.F.R. Part 100 (administrative regulations effectuating Title VI), and 42 U.S.C. § 1981. *See Guardians Association v. Civil Service Commission*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (private cause of action implied in

5. H.Con.Res. 19 (1987) (Miss.) (H01.H87R193.AHS) proposed to amend Section 213–A, Mississippi Constitution of 1890, by deleting the provision for the LaBauve Trustee. This proposal was ratified in the November, 1987 election thereby concluding the abolishment of this trustee position.

Title VI). The claims of the United States [6] are based upon the Fourteenth Amendment and Sections 601 and 602 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000d-1.[7]

The defendants do not dispute that Mississippi law forbade interracial education at the university level up to the time of the decision in *Meredith v. Fair*, 305 F.2d 343 (5th Cir.1962). Defendants' racially segregative policies at that time encompassed the areas of: (1) student enrollment, (2) maintenance of branch centers by the historically white universities in close proximity to the historically black universities, (3) employment of faculty and staff, (4) provision and condition of facilities, (5) allocation of financial resources, (6) academic program offerings, and (7) racial composition of the governing board and its staff. The fundamental issue before the court at this time, however, is whether the defendants are currently committing violations of the Thirteenth and Fourteenth Amendments, Title VI and 42 U.S.C. § 1981. This case differs in an interesting way from the usual lawsuit. The usual complaint charges that certain facts exist at the time of filing suit and the evidence at trial is retrospective—that is, it looks back to events that allegedly occurred prior to the filing. In this case the issue is over what the facts are at the time the case is being tried, 12 years after the filing of the case.

[1] At the very least, a state choosing to operate a system of public higher education has the duty to adopt and implement good faith, racially nondiscriminatory policies and practices. Black applicants must be admitted to public institutions of higher education "under the rules and regulations applicable to other qualified candidates." *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 414, 76 S.Ct. 464, 465, 100 L.Ed. 486 (1956); *Sweatt v. Painter*, 339 U.S. 629, 636, 70 S.Ct. 848, 851, 94 L.Ed. 1114 (1950); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 352, 59 S.Ct. 232, 237, 83 L.Ed. 208 (1938). Where a state has previously maintained a racially dual system of public education established by law, it assumes an "affirmative duty" to reform those policies and practices which required or contributed to the separation of races. *Milliken v. Bradley*, 433 U.S. 267, 290, 97 S.Ct. 2749, 2762, 53 L.Ed.2d 745 (1977). *See also Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). At the elementary and secondary education level the courts have defined the affirmative duty to include also the elimination of all "vestiges" or effects of the former *de jure* segregated system. *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

The courts are unanimous in holding that the affirmative duty to dismantle a racially dual structure in the elementary and secondary levels applies also in the higher education context. *See, e.g., Geier v. University of Tennessee*, 597 F.2d 1056 (6th

6. The Attorney General of the United States, upon receipt of a referral from the Department of Education, has the authority to sue on behalf of the United States to enforce statutory requirements and contractual assurances of nondiscrimination made pursuant to the operation of federally assisted programs administered by public institutions of higher education. Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1; *United States v. Marion County School District*, 625 F.2d 607, 611-13 (5th Cir.1980).

7. As recipients of federal financial assistance, the State of Mississippi and its agencies exercising management and control of the public colleges and universities are prohibited from discriminating against any individual on the basis of race, color or national origin. Section 601 of Title VI essentially prohibits discrimination which violates the Equal Protection Clause of the Fourteenth Amendment. *Regents of the University of California v. Bakke*, 438 U.S. 265, 281-87, 98 S.Ct. 2733, 2743-46, 57 L.Ed.2d 750 (opinion of Powell, J.); *id.* at 327, 98 S.Ct. at 2767 (opinion of Brennan, J.) (1978). Section 604 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-3, does not bar the United States from maintaining an action under Title VI that is, in part, aimed at eliminating the segregation of faculties at institutions of higher learning. *Caulfield v. Board of Education of the City of New York*, 632 F.2d 999, 1005 (2d Cir.1980); *United States v. Jefferson County Board of Education*, 372 F.2d 836, 883 (5th Cir.1966), *aff'd en banc*, 380 F.2d 385 (5th Cir.), *per curiam cert. denied*, 389 U.S. 840, 88 S.Ct. 67, 77, 19 L.Ed.2d 103, 104 (1967).

Cir.1979); *United States v. State of Alabama*, 628 F.Supp. 1137 (N.D.Ala.1985);[8] *Norris v. State Council of Higher Education*, 327 F.Supp. 1368 (E.D.Va.) (three-judge court), *aff'd, sub nom., Board of Visitors of the College of William & Mary v. Norris*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971); *Lee v. Macon County Board of Education*, 317 F.Supp. 103 (M.D.Ala.1970) (three-judge court), *aff'd in material part*, 453 F.2d 524 (5th Cir.1971); *Alabama State Teachers Association (ASTA) v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D. Ala.1968) (three-judge court), *aff'd*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). There is, however, substantial disagreement on the question of whether the scope of the duty is as broad in the higher education context as has been defined and applied in the elementary and secondary education context.

Several courts, relying on the Supreme Court decision in *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), have concluded that some level of racial mixture at previously segregated institutions of higher learning is not only desirable but necessary to "effectively" desegregate the system. *See Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986). Others, relying on the Fifth Circuit authority *Alabama State Teachers Association ("ASTA") v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), maintain that a state's affirmative duty is satisfied by the good faith adoption of race-neutral policies and procedures. *See Artis v. Board of Regents of the University System of Georgia*, No. CV479–251 (slip op.) (S.D.Ga. February 2, 1981) (unpublished).

Upon consideration of the pertinent case law the court is of the opinion that the more narrowly defined duty set forth in *ASTA* should control in this case. The Supreme Court in *Green* struck down a "freedom of choice" plan that was designed to desegregate elementary and secondary schools but which had failed to appreciably alter the racial identifiability of the schools. Focusing on the results of official actions rather than on the apparent presence or absence of good faith underlying such action, the Court required affirmative steps, including the establishment of mandatory attendance zones, "which promise realistically to convert promptly to a system without a 'white' school and a 'negro' school, but just schools." *Green*, 391 U.S. at 442, 88 S.Ct. at 1696. As is apparent from a contextual reading of *Green* and subsequent Supreme Court and lower court decisions considering the nature and extent of the state's duty to desegregate at the elementary and secondary level, the affirmative duty as delineated in these cases rests upon the traditional power vested in local school authorities to dictate attendance patterns in compulsory elementary and secondary school systems, that is, to order certain students to attend certain schools. The circumstances in the higher education field, however, are different.

In *ASTA*, plaintiffs challenged a proposed expansion of a historically white higher education institution located in close proximity to a historically black institution alleging that the state officials overseeing the proposed expansion failed to adequately consider how the expansion could be carried out so as to maximize integration and the enhancement of facilities and programs found at the historically black school. 289 F.Supp. at 789. The court, however, rejected plaintiffs' argument that school officials were under an obligation to choose policy alternatives which maximized the integration of component institutions. Based on what it perceived to be certain qualitative differences existing between elementary-secondary schools and institutions of higher learning, the court accordingly refused to adopt the proposition that the scope of the affirmative duty in higher education extended as far as in elementary and secondary education. *Id.* Instead, the *ASTA* court concluded that the affirmative duty to disestablish or "dismantle" a dual higher education system is fulfilled by the adoption and implementation of "good faith nondiscriminatory policies." *Id.* at 789–90.

8. Overruled by 11th Circuit, 828 F.2d 1532 (11th Cir.1987), but not on merits of case.

Writing for the three-judge court, Judge Frank M. Johnson stated:

> Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries.... From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution, and in deciding where to locate it, the legislature must consider a very complicated pattern of demand for and availability of the above-listed variables, including, also, impact on the dual system. We conclude that in reviewing such a decision as to determine whether it maximized desegregation we would necessarily be involved, consciously or by default, in a wide range of educational policy decisions in which courts should not become involved.

ASTA, 289 F.Supp. 788. The court concluded by stating that:

> [A]s long as the State and a particular institution are dealing with admissions, faculty and staff in good faith the basic requirement of the affirmative duty to dismantle the dual system on the college level, to the extent that the system may be based on racial considerations, is satisfied.

Id. at 789–90. The Supreme Court affirmed by *per curiam* decision *ASTA*'s holding that good faith implementation of nondiscriminatory policies satisfies the state's affirmative duty to desegregate a higher education system. *ASTA*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). *See also Lee v. Macon County Board of Education*, 453 F.2d 524, 527 (5th Cir.1971) (observing that the principles of public school desegregation have not been applied to institutions of higher learning in same manner as have been applied to elementary and secondary schools).

The *ASTA* court made a distinction between the state's duty in the higher education field as distinguished from the secondary and elementary education areas. This distinction was buttressed by the Supreme Court's recent decision in *Bazemore v. Friday*, 478 U.S. ——, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986). *Bazemore* in part involved a fourteenth amendment challenge of the North Carolina Extension Service 4–H and Homemaker Clubs which had been racially segregated by law prior to 1965. 106 S.Ct. at 3012. Even though the clubs continued to exhibit marked racial imbalance, the Court found that the Extension Service had "disestablished segregation" by adopting a policy allowing all club members to freely choose which club they wished to join. 106 S.Ct. at 3013. The Court distinguished *Green*'s condemnation of "ineffective" freedom of choice plans in local public schools on the grounds that "while school boards customarily have the power to create school attendance areas and otherwise designate the school that particular students may attend, there is no statutory or regulatory authority to deny a young person the right to join any club he or she wishes to join." *Id.* Thus, *Bazemore* draws a clear distinction between elementary and secondary education systems and those systems where admissions are traditionally determined by voluntary choice. In the latter context, the affirmative duty to desegregate does not contemplate either restricting choice or the achievement of any degree of racial balance.

The court perceives no inconsistency with respect to the Supreme Court decisions *Green* and *Bazemore* and the *ASTA* decision. These decisions stand in harmony for the proposition that the scope of the affirmative duty to disestablish a former *de jure* segregated system of education is to be defined in accordance with the degree of choice individuals enjoy as to whether they wish to attend college at all and, if so, which one. Where "choice" is traditionally controlled by the state, in elementary and secondary education, the state is required to exercise its control in a way which maximizes the racial integration of component institutions. Although the continued racial identifiability of educational institutions per se is not violative of the Constitution or Title VI, *see Dayton Board of Education*

v. Brinkman, 433 U.S. 406, 419–20, 97 S.Ct. 2766, 2775, 53 L.Ed.2d 851 (1977), the question of whether the state has fulfilled its affirmative duty in the elementary and secondary sphere is determined by assessing the results of state policy, that is, whether the policies implemented in fulfillment of the affirmative duty have substantially affected the racial mix of the schools involved. The overwhelming emphasis on the results of official policy in this context is appropriate since direct official control over attendance decisions can be expected to produce an immediate tangible impact on racial attendance patterns.

In the college and university education context, however, where individuals have traditionally enjoyed free choice as to whether and when to attend school, the courts have considered it inappropriate to require state officials to maximize integration when assessing official action vis-a-vis the affirmative duty to disestablish a former *de jure* segregated system. The wisdom of this approach does not rest solely upon traditional notions, however. It also rests on the qualitative distinctions existing between the post-secondary and the elementary-secondary education systems. Elementary and secondary schools in a single district tend to be fungible in the sense that they generally strive towards uniformity in offerings, facilities and services. The opposite is true in higher education. A special emphasis is placed upon the relative uniqueness of the separate institutions comprising a public system of higher education. Indeed, the uniqueness of institutions which results from the confluence of course offerings, services, size, location, faculty and students found at each institution, explains why freedom of choice is so valued and why the courts have not required the restriction of student choice in higher education. Thus, given that the state is not obligated to control student choice in fulfilling its duty to disestablish a former *de jure* segregated system of higher education, it would be inappropriate to emphasize the relative degree of integration of each institution in determining whether the state has satisfied its duty. While student enrollment and faculty and staff hiring patterns are to be examined, greater emphasis should instead be placed on current state higher education policies and practices in order to insure that such policies and practices are racially neutral, developed and implemented in good faith, and do not substantially contribute to the continued racial identifiability of individual institutions. *See Brinkman*, 433 U.S. at 413, 97 S.Ct. at 2772; *Milliken*, 418 U.S. at 744–45.

B. Student Admission, Recruitment and Retention

1. Use of the ACT Assessment

Should the Pre-Med Student Have Lower Entrance Requirements Than the Tight End?

[2] The private plaintiffs and the United States claim that the defendants continue to deny students equal access to the system of higher education on the basis of race. This challenge centers principally on the use of the ACT test scores as a requirement for admission to each of the eight institutions. The plaintiffs argue that the evidence shows the Board of Trustees adopted and has continued to use the ACT testing requirement for the purpose of minimizing the numbers of black persons eligible to enroll in the system of higher education and segregating black persons within that system, in violation of the Fourteenth Amendment and Title VI, 42 U.S.C. § 2000d et seq. *See, e.g., Washington v. Davis*, 426 U.S. 229, 239–40, 242, 96 S.Ct. 2040, 2047–48, 2049, 48 L.Ed.2d 597 (1976).

Plaintiffs argue that the analytical factors delineated in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266–68, 97 S.Ct. 555, 564–65, 50 L.Ed.2d 450 (1977), applied to the facts in the instant case, demonstrate the discriminatory intent on the part of the Board of Trustees with respect to both the adoption of the ACT requirement and its continued use. Plaintiffs contend that two of the *Arlington Heights* factors in particular—an evaluation of the historical background of the decision and the specific sequence of events leading up to the challenged decision—support the conclu-

sion that the ACT standard was originally adopted by the Board of Trustees in 1962 after James Meredith had applied for admission to the University of Mississippi, in order to minimize the desegregation of the historically white institutions. As support for their contention that the continued use of the ACT requirement is motivated by discriminatory intent, plaintiffs note "that the [standard] bears more heavily on one race than another." *Washington v. Davis*, 426 U.S. at 242, 96 S.Ct. at 2049. Further, it is contended that the employment of differing ACT requirements at each of the various institutions in effect channels those black persons eligible for admission to the historically black institutions, thereby perpetuating the racial status quo. It is also argued that the use of the ACT minimum score requirement is marked by "substantive departures," *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. at 564, in the sense that the Board of Trustees has used the ACT test scores in a manner inconsistent with the policies of the American College Testing Program, which recommends the consideration of high school grades in conjunction with the ACT test scores in making admission decisions, with the effect of reducing the numbers of blacks who might otherwise be eligible for admission if grades were included.

We start with the proposition that no educational requirement is permissible if adopted and maintained for a discriminatory purpose. *See Arlington Heights*, 429 U.S. at 256, 97 S.Ct. at 559; *Washington v. Davis*, 426 U.S. 238, 96 S.Ct. at 2046. While the circumstances surrounding the Board of Trustees' adoption of the ACT assessment in 1962 lead this court to find that the ACT assessment was in fact adopted "... because of, not merely in spite of its adverse effects upon an identifiable group," *Personnel Administrator v. Feeny*, 442 U.S. 256, 279, 99 S.Ct. 2282, 2296, 60 L.Ed.2d 870 (1979), much time has passed since 1962 and much has transpired with respect to the Board of Trustees' student admissions policies. First, it should be noted that the Board of Trustees did not adopt specific ACT test score minimums for the institutions of higher learning in 1962. It was not until May of 1976, effective the Fall of 1977, that the Board of Trustees established minimum ACT scores for college admission. The policy stipulated that no student was to be admitted to any institution as a first-time freshman who failed to achieve an ACT score of 9. The policy at that time also provided that those institutions presently requiring higher minimum ACT scores were to continue those requirements. The circumstances surrounding the adoption of this minimum ACT test score in 1976, however, do not indicate that this policy was adopted for discriminatory purposes. It is apparent to the court that legitimate questions were raised at that time with respect to the level of scholastic preparation of entering freshmen.

The court also finds that the Board appropriately justified its varying ACT minimum test score requirements within the university system by acknowledging the potentially deleterious impact upon institutional enrollments, particularly at the three historically black institutions, if a uniform score were adopted. It was clear that setting an ACT minimum score of 15 for the historically black institutions would decimate existing student enrollments. Although conceding that an ACT score of 9 was a shockingly low level of achievement for university-bound students, the Board of Trustees recognized that the realities of the student body composition at that time required that a low score be utilized at those universities. During the past several years, the gap which had existed between the historically white and the historically black institutions as to ACT minimum scores has narrowed considerably.

The court also finds adequate justification for the Board of Trustee's decision not to adopt high school grades as a component of the admission requirements. Evidence was presented at trial which indicated that the Board of Trustees was, and continues to be, concerned about grade inflation and the lack of comparability in grading practices and course offerings among Mississippi's diverse high schools. Furthermore, the ACT organization advised the Board of

Trustees in 1976 that although inclusion of grades with ACT test scores was a sound indicator of both level of preparation and likelihood of success at the freshman level in college, the use of the ACT test score alone was also a valid indicator. ACT's position remains unchanged.

There have been a number of other revisions of the admission requirements which, given the circumstances existing during such times, indicate that the Board of Trustees was in fact responding to legitimate educational and fiscal concerns and not to the relative racial mix at the historically white institutions. Most recently, and consistent with a concern regarding the academic readiness of entering freshmen, the Board of Trustees in July, 1982 adopted high school course requirements for implementation in the Fall of 1986. There is strong evidence that the adoption of the core curriculum requirement has in fact raised the level of academic preparation of entering freshmen as measured by an improvement on the ACT test scores of those students completing the core curriculum requirements.

The court finds that the current admission policies and procedures, including the particular use to which the ACT assessment is put, were not adopted for racially discriminatory purposes and are reasonable, educationally sound, and racially neutral. There can be no doubt that the ACT test score is a reliable instrument frequently used as an integral component of college admission standards. As previously noted, every state in the United States has at least one institution making use of the ACT data and it is the predominant admission test in some 28 states. In addition to providing a highly relevant status report on student school achievement, the ACT, as a standardized instrument, enables Mississippi educators to assess uniformly the level of academic preparation of students graduating from high schools across the state. In addition, the positive correlation between performance on the ACT and academic achievement during the freshman year at Mississippi universities is well established.

While average ACT scores do differ among Mississippi black students as contrasted with Mississippi white students, the Board-established minimum ACT scores are extremely modest levels of required performance. Nationally, 95% of all ACT tested students score 9 or above and over 70% of all students score 15 or above. Nine out of every ten ACT tested students in Mississippi, including 80% of all black students, score 9 or above on the ACT; and students who achieve a 9 on the ACT English and social studies tests are only reading at a ninth grade level. Indeed, the Board of Trustees' admission standards are even more modest than the recently adopted NCAA Proposition 48 which requires achievement of specified ACT composite scores in order for student athletes to be eligible to participate in athletics. Beginning in August, 1988, all student athletes must achieve an ACT composite score of 15 and at least a 2.0 grade point average on a 4.0 scale. Unlike the Board's standards, there are no exceptions to this 15 requirement and, further, the Board does not require students to achieve the 2.0 grade point average. The court is of the opinion that it would be regressive to order the universities of this state to adopt an admissions policy in which entering pre-med and pre-law students have lower admission requirements than a physical education student who is on scholarship to play tight end.

In the absence of a showing of intentional discrimination, the standards under the Fourteenth Amendment and Title VI do not require the state to modify or lower valid admission or other educational standards even if those standards have a disparate impact on minority or other-race students and even if there exist other reasonable alternatives with less disparate impact. As the Fifth Circuit Court of Appeals has held in *LULAC v. Texas*, 793 F.2d 636, 649 (5th Cir.1986), a case involving an attack on admission standards for a teacher education program in a formerly segregated higher education system, "even a state that formerly practiced de jure segregation is not required by the [Equal Education Opportunity] Act to suspend or lower valid

academic standards." Similarly, a Title VI violation is established either under the standard "disparate impact" analysis or the affirmative duty outlined above, "only if the challenged test is not a reasonable measure of a bona fide educational requirement." *Id.* The rationale for this rule is simple. "If the [challenged educational standard] is valid, enjoining its use would not, in any meaningful way, counteract the effects of past segregation, but might simply serve to perpetuate a dual standard," *id.*, by reinforcing the stereotype that minority students cannot satisfy generally applicable educational standards and by diluting educational benefits offered to all students, black and white. Indeed, if valid academic standards were lowered to eliminate a disparate impact, this would simply serve to lock in, not correct, any educational deficiencies suffered by black children in elementary and secondary schools, by "celebrating and perpetuating the hollow certification that accompanied black graduation pre-*Brown v. Board of Education.*" *Deborah P. v. Turlington*, 654 F.2d 1079, 1085 (5th Cir.1981) (Tjoflat, J., dissenting from denial of rehearing en banc).

If Title VI is construed to prohibit the establishment of reasonable academic standards simply because they tend to reinforce the racial identifiability of previously segregated colleges, it might well be argued that formerly black schools are obliged to raise academic standards if this reduces black participation or increases white representation. No such rule, however, can be derived from the Constitution or Title VI. In addition, the Supreme Court has consistently emphasized that courts "are particularly ill-equipped to evaluate [academic decisions]" and that this consideration "warn[s] against any such judicial intrusion into academic decision-making." *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124 (1978).

As to plaintiffs' argument that current admission policies in effect "channel" black students to the historically black universities, the only pertinent data presented at trial revealed that the utilization of the ACT composite score of 15 as a requirement for admission at the historically white institutions and the use of an ACT composite score of 13 at the historically black institutions do not substantially contribute to the continued racial identifiability of Mississippi universities. The historically black institutions are not predominantly black because black students who first preferred to attend a historically white institution were "channeled" to black institutions after failing to achieve a test score of 15. As previously pointed out, practically all the black students who applied to predominantly white universities in the Fall of 1986 were accepted.

Finally, private plaintiffs also suggest that the current admission standards perpetuate the prior intentional discrimination at the elementary and secondary school levels. Plaintiffs cite *Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986) for the proposition that the Board of Trustees must "compensate" for unequal educational opportunities at lower education levels. Although *Geier* alluded that a district court's consideration of conditions in public elementary and secondary school systems was appropriate in fashioning a remedial plan, that is a far cry from establishing a *duty* to consider the conditions found at the elementary and secondary levels. Further, the Fifth Circuit's holding in *LULAC* is clear that higher education systems are under no legal obligation to "compensate" or "remedy" constitutional infirmities existing at the elementary and secondary school levels. *LULAC*, 793 F.2d at 647.

Given the foregoing, the court finds that current Board admission policies in force among the institutions of higher learning, including the use of the ACT test scores in conjunction with the core curriculum requirement, are inherently reasonable and educationally sound after giving due consideration to the discriminatory taint attached to ACT requirements by the Board of Trustees' initial adoption of the ACT assessment in 1962.

2. Student Recruitment and Retention

[3] The defendants have for a number of years made well known their desire to

attract and recruit minority race students at each institution, especially the historically white institutions. Each institution implements various techniques in accomplishing this objective. For example, universities employ other-race recruiters charged with specific responsibility for recruiting other-race students. Multi-racial recruiting teams are frequently used. In addition, recruitment brochures and other university publications highlight a commitment toward other-race participation. Indeed, with respect to the universities' recruitment initiatives at high schools and junior colleges, the Board of Trustees has prohibited recruitment at schools which fail to execute an agreement allowing multi-racial recruiting teams. The evidence also shows that other-race students who choose to attend any of the eight Mississippi institutions enjoy desegregated campus environments.

The above practices are reasonable and affirmative efforts by the defendants with respect to the recruitment of other-race students at each institution. Although recruitment of minority students is a competitive business, every institution within the system seems to strive for increased enrollment of students of all races. Such competition has understandably affected each institution's ability to attract other-race students. We find, in any event, that other-race recruitment efforts have been successful and evince the defendant's commitment to the maintenance of a state-wide system which not only speaks of a nondiscriminatory policy and practice but also affirmatively encourages minority participation in the system. The statistics presented at trial also demonstrate success in that the actual representation of blacks in the freshman classes at Delta State University, Mississippi State University, Mississippi University for Women, and the University of Southern Mississippi is in statistical parity with the representation of blacks in the qualified pools. The proof shows that qualified blacks and qualified whites are equally likely to apply, be accepted, and enroll at these universities. While the University of Mississippi is absent from this list, there is no evidence to suggest that the lack of black student applications to the University of Mississippi is due in any way to official discriminatory policies or practices.

Pursuant to the terms set forth in the 1974 Plan of Compliance, defendants have expended considerable efforts toward improving the retention rate of minority students by developing and implementing developmental studies programs at each institution. We find that the rather substantial success of the programs underscores the good faith effort undertaken by the defendants with respect to the recruitment of minority students.

3. Admissions Policies

Conclusion

In summary, the court finds that the current admission policies and procedures in effect among the Mississippi institutions of higher learning were adopted and developed in good faith and for nondiscriminatory purposes. The defendants' good faith is well illustrated by the affirmative efforts undertaken by the institutions of higher learning towards the attraction and recruitment of other-race students at each institution. Although the various institutions continue to be identifiable by the racial makeup of the student populations, this is not a substantial result of current admission practices and procedures but is instead the result of a free and unfettered choice on the part of individual students. Further, the court finds that the defendants have used every reasonable means at their disposal in their recruitment efforts. Defendants' efforts with respect to other-race student recruitment and retention satisfy their affirmative duty to dismantle the former segregated system insofar as the duty pertains to student enrollment.

C. The Assignment of Missions and the Allocation of Programs, Funding and Facilities

[4] The private plaintiffs and the United States challenge the assignment of missions in 1981 and the current allocation of programs, funding and facilities which flows from the mission designations. The plaintiffs' attack on the policies follows two relatively distinct arguments. First, plaintiffs argue that the affirmative duty to

disestablish a former *de jure* segregated system of higher education should be defined and applied in a way so as to ensure both equal access to the system and the substantial integration of all component institutions. Equal access to the system is provided by the elimination of racially discriminating policies and the implementation of race-neutral student admission and faculty and staff hiring policies and procedures. With respect to integration, while implicitly acknowledging that *Bazemore* and *ASTA* speak against the state being under an obligation to directly influence student attendance choices by implementing, for example, quotas or attendance zones, plaintiffs argue that the state must seek to maximize the racial integration of component institutions through the modification and manipulation of policies in areas which indirectly affect and condition student attendance choices, especially policies in the areas of programs, facilities and funding. It is argued that the modification of existing policy in these areas by increasing the level, number and type of programs and facilities found at the historically black institutions would serve to entice greater numbers of white students to attend the historically black schools. For example, it is argued that the offering of one or more popular Ph.D programs at a black institution, that are not available at a white institution, would attract more white students to the black institution.

Regardless of the context, the affirmative duty to disestablish a former *de jure* system is to be defined in unyielding terms to ensure that all student admission and faculty and staff hiring policies and procedures operate on a racially neutral basis. And although the affirmative duty has been defined to include also an interest in fostering the racial integration of educational institutions once segregated by law, the lengths to which the state must go to integrate its institutions vary according to the degree of control the state possesses over attendance patterns and according to the nature and extent of any interests which may serve to counterbalance the interest in integration. Thus, for example, in *Green*, the Supreme Court placed upon the defendants the obligation to adopt mandatory attendance zones in an effort to force some degree of integration in formerly segregated elementary schools. In *ASTA*, on the other hand, the court declined to require the defendants to use the proposed expansion of university level educational offerings as an opportunity to enhance a local historically black institution so as to enable the black school to attract greater numbers of white students. The court based its decision upon a recognition of the many interests and factors which confront decision-makers at the higher education level and which serve to counterbalance the desire to integrate each institution. *ASTA*, 289 F.Supp. at 788. "From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution ... the legislature must consider a very complicated pattern of demand for and availability of [such variables as institutional goals, facilities, equipment and course offerings] including, also, the impact on the dual system." *Id.* The *ASTA* court therefore concluded that the Constitution does not require school officials to pursue policy alternatives which happen to offer the greatest integrative potential at the expense of legitimate racially neutral policies. This court agrees with the holding and the underlying rationale set forth in *ASTA*.

Plaintiffs also argue that the differentiation which exists among the component institutions in the areas of mission, facilities, equipment and funding are disparities causally related to the former *de jure* system since in these areas "normal administrative practices should produce schools of like quality, facilities and staffs." *Swann*, 402 U.S. at 18–19, 91 S.Ct. at 1277. It is therefore argued that the assignment of missions, which is claimed to have favored the historically white institutions at the expense of the historically black institutions, and defendants' allocation of educational resources among the institutions commensurate with the mission designations constitute a denial of equal educational opportunity to the students choosing to

attend the historically black institutions. It is further argued that given these continuing disparities between the historically black and the historically white institutions "the victims of discriminating conduct [have not been restored] to the position they would have occupied in the absence of such conduct." *Milliken v. Bradley*, 433 U.S. at 280, 97 S.Ct. at 2757. Plaintiffs accordingly contend that the defendants' duty to disestablish the former *de jure* system has not been satisfied until the disparities in programs, facilities, equipment, and financing have been eliminated through the enhancement of the historically black institutions and their equalization with the historically white institutions.

Preliminarily, the court notes that the plaintiffs' argument as set out above comes dangerously close to suggesting that institutions are accorded rights under the equal protection clause. There should be no doubt, however, that the equal protection clause has no application to acts of the state taken with respect to its own political subdivisions and agencies. *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 432, 77 L.Ed. 1015 (1933); *Trenton v. New Jersey*, 262 U.S. 182, 187, 191, 43 S.Ct. 534, 538, 67 L.Ed. 937 (1923); *County Department of Public Welfare v. Stanton*, 545 F.Supp. 239, 242 (N.D.Ill.1982). Such entities, as creations of the state, simply have no privileges and immunities against the state and are incapable of experiencing injury under the equal protection or due process clauses of the Fourteenth Amendment. *See Triplett v. Tiemann*, 302 F.Supp. 1239, 1242–43 (D.Neb.1969).

As the court has previously observed, a system of higher education, comprised of a number of separate institutions serving different goals and fulfilling various needs and governed by a common authority, is inherently different from elementary and secondary school systems, which are not marked by diversity but rather are characterized by uniformity. The court therefore does not find as persuasive those authorities relied upon by the plaintiffs in support of their argument that were it not for the former *de jure* system one would have expected and found institutions of substantially the same type, number, and level of program offerings, mission and facilities. To be sure, in reviewing the evidence offered in this case, the court has found a number of differences existing among and between the institutions of higher learning. The court cannot state, however, that such differences are "disparities" reminiscent of the former *de jure* system. Instead, such differences in programs, mission, facilities and funding are usually found, and are to be expected, within a system of higher education which includes eight institutions throughout the state. Surely it cannot be soundly argued that the state should allocate equal monies to each institution. Such a practice would foster mediocrity or worse. It appears to the court that the very limited higher education dollars are too widely dispersed among too many institutions already. As long as qualified students, black and white, can attend the type and quality of available institutions they choose, there is no denial of equal protection. The court will address particular areas of concern in the sections which follow.

1. The Assignment of Missions

Plaintiffs argue that the way in which the defendants allocated missions in 1981 in essence freezes in the effects of past discrimination since the three major historically white institutions were the only institutions to receive a comprehensive designation, thus ensuring their continued receipt of the greater share of the available educational resources. Plaintiffs impliedly suggest, too, that the defendants' designation of missions, relegating the three historically black institutions to relatively inferior status by classifying these institutions as either "urban" or "regional," was racially motivated. Plaintiffs conclude by stating that the affirmative duty requires that the current mission classifications be disregarded and that the historically black institutions' academic programs be enhanced in an effort to equalize offerings vis-a-vis the historically white institutions.

The court finds plaintiffs' argument to be unpersuasive. Plaintiffs' argument if accepted could lead the court to conclude

that they want to continue the existence of predominantly black and predominantly white colleges but continue them on an equal quality basis with each other. Ignoring the *Plessy v. Ferguson* doctrinal overtones to plaintiffs' argument, the court finds that the defendants' designation of missions in 1981 was not motivated by a discriminatory purpose but was instead necessitated and justified by a need to conserve scarce educational resources. It is obvious that the allocation of missions based on the then existing programs, facilities and other educational resources found at each institution would best serve the goal of resource conservation. Just as in *ASTA*, the defendants in the instant case were and are under no constitutional duty to utilize the opportunity presented by their decision to define and delimit institutions by mission as a way to maximize the racial integration of component institutions. Furthermore, in view of the fact that the system of higher education and each of the member institutions are accessible to graduating high school students on racially neutral grounds, it cannot be seriously contended that the designation of missions discriminatorily impacts on students enrolled in the urban or regional institutions. The court therefore finds that the current mission designations are rationally based on sound educational policies and are not violative of the equal protection clause.

2. Unnecessary Program Duplication

During the trial, plaintiffs attempted to demonstrate that a substantial degree of unnecessary program duplication continues to exist within the system of higher education in Mississippi despite the recent inroads made by the Board of Trustees in lessening the amount of duplication. Apparently, this evidence was intended to produce a logical inference that the level of unnecessary program duplication existing between historically black institutions and the historically white institutions has a negative effect on white student choice to attend the historically black institutions. The plaintiffs accordingly contend that the defendants are required to eliminate existing program duplication in a way that would enhance the program offerings of the historically black institutions, that is, eliminating the unnecessarily duplicative programs from the curriculum of the historically white institutions.

As detailed above, however, the defendants are under no duty to undertake efforts to enhance the historically black institutions without regard to the various other competing interests which influence policy choices in the higher education area, primarily money. Furthermore, there is no proof that unnecessary program duplication is directly associated with the racial identifiability of institutions. In addition, there is no proof that the elimination of unnecessary program duplication would be justifiable from an educational standpoint or that its elimination would have a substantial effect on student choice. Indeed, the experience of other courts assessing the relative impact of the elimination of unnecessary programs between historically white and historically black institutions indicates that the elimination of such programs would have little impact. *See, e.g., Artis*, slip op. at 4. In any event, there is no showing in this case that the elimination of unnecessary programs within the system of higher education in Mississippi would be feasible, educationally reasonable, or would offer any hope of substantial impact on student choice. The court therefore finds that the continued existence of unnecessary program duplication within the system of higher education does not constitute a violation of defendants' affirmative duty.

3. Facilities

The court does not perceive a racially discriminatory pattern existing with respect to the allocation and condition of facilities when measuring facility resources by the amount of net square feet per full-time equivalent student. The historically black institutions have over the past 15 years received a higher proportionate share of state appropriations for capital improvements. While having only approximately 25% of the total enrollment, the historically black institutions received 39% of state appropriations from 1970 through 1980 for new construction; and from 1981 through

1986 they have received 51% of such funds. The distribution of funds for capital improvements clearly evinces a good faith affirmative effort on the part of the defendants to provide adequate facilities at the historically black institutions in accordance with their defined mission. While there is a need for repair of facilities at the historically black institutions, the court finds the same need exists across all institutions. We thus perceive no racial pattern with respect to the condition of facilities.

4. Financing

Plaintiffs also advance the argument that the defendants have failed to equitably allocate financial resources at the historically black institutions relative to the historically white institutions. It is argued that if one examines the issue of financial allocations by grouping the historically white institutions and the historically black institutions, one clearly finds allocations which favor the historically white institutions.

Plaintiffs' analysis disregards the allocation and definition of missions. It also ignores the relationship between the number and level of programs and the funding necessary to carry out those programs. If one follows mission precepts, no racial correlation can be inferred from an analysis of financial allocations to institutions on a per full-time equivalent student basis. Higher total per full-time equivalent student revenues and expenditures are found to differ between the comprehensive and noncomprehensive institutions; but this is true between white comprehensive and noncomprehensive institutions as well as black noncomprehensive institutions. Such differences are not indicative of educationally unreasonable or inequitable treatment of the historically black institutions. The educational expectation is that institutions with greater program breadth and research emphasis and greater emphasis on technical programs will reflect the higher per student total revenues and expenditures. Thus, while differences in level of funding obviously exist, these differences are not accountable in terms of race but rather are explained by legitimate educational distinctions among institutions. The court finds influential the question posed by the defendants. If from the total funding allocated by the legislature, funds that had been allocated to a comprehensive university were taken by the Board and transferred to a black noncomprehensive university, thereby decreasing the availability or quality of a program or programs at the comprehensive university, what would be the effect on the black students attending the comprehensive university? Approximately 30% of all black college students attending four-year colleges in the state attend one of the comprehensive universities. To follow the plaintiffs' argument to its ultimate conclusion would decrease the quality of the programs available to that 30% of the state's black students.

5. Land Grant Activities

Plaintiffs also argue for increased funding and resource allocation to the Alcorn State University's land grant programs. Plaintiffs point out that the land grant programs offered at Mississippi State University are vastly superior to those afforded students in the land grant programs at Alcorn State University. Plaintiffs contend that the factors which mark the Mississippi State University program as superior, for example, the greater breadth of course offerings and research opportunities, are the product of years of discrimination. It is also argued that additional resources for Alcorn State University would increase other-race presence at Alcorn and black participation in land grant activities.

Insofar as plaintiffs' argument can be construed as suggesting that Alcorn State University has standing to challenge the way in which the state has historically and at present allocates its educational resources among the institutions of higher learning, the court, as detailed above, finds that Alcorn State University is incapable of raising a legally cognizable challenge to such allocations. *See Williams v. Mayor and City Council of Baltimore*, 289 U.S. at 40, 53 S.Ct. at 432. To the extent plaintiffs' contentions are made on behalf of the students and faculty of Alcorn State University, we find that black citizens have

equal access to the remaining institutions of higher learning, including Mississippi State University, and that therefore plaintiffs have failed to make a showing that educational opportunity in the land grant area is in any way restricted. As the court has previously found, the defendants have allocated funds for land grant instruction in accordance with a racially neutral and an educationally sound funding formula. Further, the differentiations made by the defendants with respect to the nature of the land grant programs offered at the two land grant schools are educationally sound and are not motivated by discriminatory motive. Finally, the affirmative duty as defined by this court does not require the defendants to manipulate institutional missions, program offerings and facilities in an effort to maximize the racial integration of component institutions. Accordingly, the court finds plaintiffs' contentions to be without merit.

D. Faculty and Staff Employment

[5] The private plaintiffs and the United States contend that a review of historical and current patterns of employment of faculty and administrators, by race, reveals that this pattern, alone, continues to designate universities as intended for black or white students in accord with the institutions' historical racial designation. It is argued that because the defendants' former *de jure* system also encompassed faculty and staff employment, as well as the Board of Trustees staff employment, the affirmative duty to dismantle the former segregated system extends as well to this area. Further, plaintiffs point to alleged specific instances of discriminatory conduct directed towards black faculty and staff at several of the historically white institutions. It is argued that this evidence of intentional discrimination establishes a violation of the Fourteenth Amendment and 42 U.S.C. § 1981.

The evidence shows, however, that the defendants have adopted racially neutral hiring policies with respect to faculty and all staff at each of the institutions of higher learning, including the Board's own staff. Consistent with the defendants' stated objective of increasing employment of other-race faculty, the predominantly white institutions expend substantial affirmative efforts each year in attempting to attract and employ other-race faculty. There is an acute shortage of qualified black faculty applicants throughout the United States, and practically all universities are competing for a limited number of black teachers. Despite the acute shortage of supply of qualified minority faculty existing nationwide, the defendants' affirmative action policies have borne considerable fruit. Since 1974, the percentage of blacks hired exceeds the black representation in the qualified labor pool. Moreover, even though the turnover rate for black faculty is higher than it is for whites due to the high demand for black faculty existing nationwide, the present representation of blacks among the faculty at each of the five predominantly white institutions is statistically in line with the relevant labor market for faculty employed since 1974.

The court is not aware of any additional minority faculty and staff recruitment procedures the defendants could implement which would assure greater minority faculty and staff representation at the predominantly white institutions and minority staff representation within the Board of Trustees' own organization. The court, therefore, finds that the defendants' stated policy of nondiscrimination and affirmative commitment to the employment of other-race faculty and staff at every institution within the system, and the efforts undertaken pursuant to the stated policy, serve to fulfill their affirmative duty to dismantle the former segregated system as it pertains to faculty and staff employment.

IV. Conclusion

From the many days of testimony and the thousands of pages of exhibits received by the court during this trial, it is very easy indeed to become concerned with the inefficiencies and wastefulness of the higher education system in the state which came out so clearly from the evidence; but the issues of this case are not about the inefficiency for example of having two state universities only 20 miles apart in the

eastern part of the state with separate administrations and duplicating programs, and two state universities on the western side of the state only 50 miles apart, each with separate administrations and duplicating programs. The issues are not about the economic efficiency of funding traditionally black and traditionally white universities which duplicate as many as 75% of each other's baccalaureate programs. Nor do the issues in the case deal with the wisdom of maintaining a system which required in the hard economic times of 1981–86 the first university of the state, the University of Mississippi, to drop more programs than was required of a smaller, non-comprehensive university; nor do the issues deal with the attempt by the state to maintain three comprehensive universities which compete with each other for the financial resources available, when larger surrounding states with larger higher education budgets maintain only one premier comprehensive university per state.

What the issues of this case are about are the Constitution and the laws of the United States as they apply to the offering of higher education by the State of Mississippi to its citizens and whether any practices or policies of the State in the higher education field are racially motivated to bring about results which deprive black citizens of benefits provided to white citizens.

In summary, the court finds that current actions on the part of the defendants demonstrate conclusively that the defendants are fulfilling their affirmative duty to disestablish the former *de jure* segregated system of higher education. The defendants have adopted race-neutral policies and procedures in the areas of student admission and recruitment and in the areas of faculty and staff hiring and resource allocation. The defendants have also undertaken substantial affirmative efforts in the areas of other-race student and faculty-staff recruitment and funding and facility allocation. It is obvious from the testimony presented that the defendants undertake to fund more institutions of higher learning than are justified by the amount of financial resources available to the state, but that is a policy decision of the legislature that affects the quality of the institutions among which the monies must be so thinly divided. Such a decision by the legislature goes to the quality of the institutions and not to the constitutionality of the funding. The differentiations made by the defendants with respect to each of the individual institutions in the designation of institutional missions are reasonable and were not motivated by discriminatory purpose. The court finds no proof in this record of current violation of the Constitution or Statutes of the United States by the defendants. This case should therefore be dismissed.

Let an order issue accordingly.

DESIGN TIME, INC., et al., Plaintiffs,

v.

SYNTHETIC DIAMOND TECHNOLOGY, INC., et al., Defendants.

No. S86–519.

United States District Court, N.D. Indiana, South Bend Division.

Oct. 13, 1987.

Action was brought alleging securities fraud and RICO violations. On motions to dismiss, the District Court, Miller, J., held that: (1) fraud was not alleged with sufficient particularity; (2) section 17(a) of the Securities Exchange Act provides no implied private cause of action for damages; and (3) complaint did not allege acts constituting a "pattern of racketeering activity" as required to state a claim under RICO.

Motions granted.

Jake AYERS, Sr., et al., Plaintiffs, Jake Ayers, Jr., Bennie G. Thompson, Leola Blackmon, Lillie Blackmon, Louis Armstrong, Darryl C. Thomas and Leon Johnson, Plaintiffs–Appellants,

and

United States of America, Intervenor–Appellant,

v.

William ALLAIN, Governor, State of Mississippi, et al., Defendants–Appellees.

No. 88–4103.

United States Court of Appeals, Fifth Circuit.

Feb. 6, 1990.

Black Mississippi citizens commenced class action against various state officials, alleging constitutional and statutory violations from allegedly racial dual system of public higher education. The United States District Court for the Northern District of Mississippi, Neal B. Biggers, Jr., J., 674 F.Supp. 1523, held that state had fulfilled its duty to disestablish former de jure segregated system, and dismissed the case. On appeal, the Court of Appeals, Goldberg, Circuit Judge, held that continued racial identification of state's public universities violated equal protection and Title VI of the Civil Rights Act of 1964.

Reversed and remanded.

Duhé, Circuit Judge, dissented and filed opinion.

1. Civil Rights ⇐127

State has affirmative duty to eliminate all "vestiges" or effects of de jure segregation, root and branch, in university setting.

2. Civil Rights ⇐127
Constitutional Law ⇐220(3)

State of Mississippi violated equal protection rights of black university students through policies and practices which maintained racial identities of public universities in state; admission tests discriminated against blacks in predicting college performance, racial composition of faculties and administrations followed historical racial lines, more academic programs were offered by historically white institutions, and historic underfunding of black institutions continued. U.S.C.A. Const.Amend. 14.

3. Statutes ⇐269

Retroactive application of statute is appropriate when Congress enacts statute to clarify Supreme Court's interpretation of previous legislation, thereby returning law to its previous posture.

4. Civil Rights ⇐102

Civil Rights Restoration Act of 1987 operated retroactively such that Mississippi's public universities, which received federal financial assistance and which were found, before effective date of Act, to have violated equal protection by perpetuating racial identity of various institutions, could also be found to have violated Title VI of the Civil Rights Act of 1964. U.S.C.A. Const.Amend. 14; Civil Rights Act of 1964, §§ 601, 606, as amended, 42 U.S.C.A. §§ 2000d, 2000d–4a.

Robert Pressman, Center for Law & Educ., Cambridge, Mass., Alvin O. Chambliss, Jr., Oxford, Miss., for Ayers, et al.

Linda F. Thome, Jessica Dunsay Silver, Nathaniel Douglas, John R. Moore, Levern M. Younger, Franz R. Marshall, and Zita Johnson–Betts, U.S. Dept. of Justice, Civ. Rights Div., Educ. Opportunities Litigation, Sec., Washington, D.C., for the U.S.

Mike Moore, Atty. Gen., Paul Stephenson, William F. Goodman, Jr., Ed Davis Noble, Jr., Jackson, Miss., for defendants-appellees.

Appeals from the United States District Court for the Northern District of Mississippi.

Before GOLDBERG, JOHNSON and DUHÉ, Circuit Judges.

GOLDBERG, Circuit Judge:

"'The time has come,' the Walrus said, 'To talk of many things:
Of shoes—and ships—and sealing wax—Of Cabbages—and kings—
And why the sea is boiling hot—and whether pigs have wings.'"[1]
We'll sit and chat of times gone by, and visit with the queens
Brown, and, *Sweatt* and *Meredith* not to mention the fertile *Green*
And then we'll see why *Ayers* should fly and how equality is king!

Today we write an opinion concerning a class action lawsuit involving the public universities of Mississippi. The question is whether the racial identity of these institutions results from the free choice of the students or from state policies and practices.

A group of plaintiffs filed this lawsuit against the Governor of Mississippi, the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, the Commissioner of Higher Education, and other state officials in January, 1975. These private plaintiffs consists of a class certified by the district court as:

> all black citizens residing in Mississippi, whether students, former students, parents, employees or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.[2]

They have alleged that the defendants were maintaining and perpetuating a racially dual system of public higher education in violation of the equal protection clause of the fourteenth amendment and Title VI of the Civil Rights Act of 1964.

The United States intervened as a plaintiff shortly thereafter making identical allegations. The private plaintiffs and the United States, collectively referred to as "the plaintiffs," seek an injunction directing the defendants to eliminate all vestiges of the racially segregated system of higher education in Mississippi.

The defendants answered the plaintiffs' allegations arguing that the existence of predominantly one race universities does not violate the equal protection clause because Mississippi has implemented, in good faith, a nondiscriminatory admissions and operations policy. The defendants believe that the identifiability of the universities by the racial composition of the student population results from the free and unfettered choice of the students themselves.

In the spring of 1987, a five week trial was conducted in Oxford, Mississippi following twelve years of pretrial preparation. The record consists of 4,400 pages of trial testimony and approximately 2000 exhibits. At the end of 1987, the district court ruled for the defendants on the issue of liability and dismissed the plaintiffs' case.[3] The plaintiffs appeal.

I. THE FACTS

A. *A History of De Jure Discrimination*

The Mississippi university system consists of eight institutions and several entities under the plenary power of a Board of Trustees (the "Board").[4] These universi-

1. Lewis Carroll, *Through the Looking Glass and What Alice Found There*, Chapter IV, Tweedledum and Tweedledee (1872), *reprinted in The Complete Illustrated Works of Lewis Carroll* 117 (Guiliano ed. 1982).

2. *Ayers v. Allain*, 674 F.Supp. 1523, 1526 (N.D. Miss.1987).

3. *Id.* at 1564.

4. The Board, created in 1932, is the governing body of all of the state universities in Mississippi. The Board consists of 13 members. From 1932 to 1972, the members of the Board were all white. At the time of trial in 1987, three of the thirteen members were black.

The governor of Mississippi, with the consent of the Mississippi Senate, appoints twelve members of the Board. Ten must reside in the geographical district that they represent. The other two are chosen at-large from the state. Members serve staggered twelve year terms so that every four years four seats are open for selection.

In addition, a special seat belonging to the University of Mississippi alone, designated the LaBauve Fund seat, has a four year tenure so that the seat is available at the same time one-

ties were segregated by race through the spring of 1962, contrary to the Supreme Court's 1954 mandate in *Brown v. Board of Education*,[5] when our court forced the University of Mississippi to admit its first black student, James Meredith.[6] Prior to the admission of Meredith, no black students attended any of the historically white universities and no white students attended any of the historically black universities. The historically white universities were: (1) the University of Mississippi; (2) Mississippi State University; (3) the University of Southern Mississippi; (4) Mississippi University for Women; and, (5) Delta State University. The historically black universities were what are now known as: (1) Jackson State University; (2) Alcorn State University; and, (3) Mississippi Valley State University.

At the time of the *Meredith* decision, the Board had implemented segregative policies encompassing: (1) student enrollment; (2) the maintenance of branch centers by the historically white universities in close proximity to the historically black universities; (3) the employment of faculty and staff; (4) facility provision and condition; (5) the allocation of financial resources; (6) academic program offerings; and, (7) the racial composition of the Board and its staff.[7] The Board did not permit black students to enroll at any of the historically white universities under its auspices.[8] The years each of the historically white universities first enrolled a black student are as follows:

University of Mississippi	1962
Mississippi State University	1965
Mississippi University for Women	1966
University of Southern Mississippi	1967
Delta State University	1966

Similarly, white students did not attend a historically black university until the late 1960's:

Alcorn State University	1966
Jackson State University	1969
Mississippi Valley State University	1970

The racial identification of Mississippi's public universities continues to the present day. Undergraduate programs included the following percentages of black enrollment between the years 1973–74 and 1985–86:

Historically White Institutions[9]	1973–74	1980–81	1985–86
Delta State University	14.3	17.1	17.59
Mississippi State University	5.6*	11.2	11.0
Mississippi University for Women	9.9	19.3	18.0
University of Mississippi	3.5	7.0	5.9
University of Southern Mississippi	4.5	11.3	14.24

third of the Board turns over. The month before the district court issued its opinion, the people of Mississippi abolished by popular vote the LaBauve Fund seat. The governor appointed and the senate confirmed four white trustees and one black trustee for the end-of-term vacancies which occurred in 1972, 1976, 1980, and 1984. For intra-term vacancies, the appointments have always been white trustees.

5. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

6. In 1962, Judge Wisdom, writing for our Court, ordered the University of Mississippi to admit a black transfer student named James Meredith. *Meredith v. Fair*, 305 F.2d 341 (5th Cir.1962). Meredith was a student at Jackson State College when he applied for admission to the University of Mississippi in January, 1961. He sought transfer because he found Jackson State College to be substandard. The University of Mississippi denied his admission application and in response Meredith filed suit in federal district court. Judge Wisdom wrote: "[t]he efforts of the Board of Trustees [of the State Institutions of Higher Learning] and the officials of the University of Mississippi together with various state officials, including the Governor and the Lieutenant Governor of the state of Mississippi, and the Mississippi Legislature to impede and deter efforts to integrate the student body at the University of Mississippi during the 1961–62 school year are well documented."

7. *Ayers*, 674 F.Supp. at 1551.

8. *Id.* at 1529.

9. * The figure for Mississippi State University for 1973–74 is an average derived from 1972–73 and 1974–75 data because data for 1973–74 are not available.

	1973–74	1980–81	1985–86
Historically Black Institutions			
Alcorn State University	99.7	96.9	95.6
Jackson State University	99.6	95.2	91.9
Mississippi Valley State University	99.7	99.8	99.3

The racial composition of the graduate programs reflects a similar pattern.

	1973–74	1980–81	1985–86
Historically White Institutions [10]			
Delta State University	41.6	38.3	26.2
Mississippi State University	12.8**	9.6	8.0
Mississippi University for Women	14.5	18.0	13.0
University of Mississippi	7.6	8.4	7.5
University of Southern Mississippi	9.2**	8.7	8.1
Historically Black Institutions			
Alcorn State University	0	99.4	96.0
Jackson State University	91.8	85.3	59.0**
Mississippi Valley State University	0	94.7	96.7

In summary, regarding undergraduate enrollment in 1986, over 99% of the white students (26,759 out of 26,953) were enrolled in historically white institutions and over 71% of the black students (9,125 out of 12,826) were enrolled in historically black institutions.

B. *Admissions Policies*

The historically white institutions require all applicants to achieve a minimum score of 15 on the ACT, a standardized college admissions examination, as a prerequisite for admission. The Board instituted this policy soon after the court ordered admission of James Meredith to the University of Mississippi in 1962 because it deterred black enrollment.[11] At the time, the average ACT score for white Mississippi students was 18 while the average for black Mississippi students was 7.

In 1976, the Board augmented the ACT requirement requiring a minimum score of 9 for admission to any of Mississippi's public universities ostensibly in response to complaints voiced by university faculty and staff regarding the preparation of incoming freshmen. This ACT minimum was directed at the historically black schools. The three largest historically white schools maintained the 15 ACT minimum.

The Board again modified admission requirements in 1977 and in 1982. In 1977, the Board created an exception to the 9 point ACT minimum. Students with ACT scores of 9 or above could be admitted to the historically white schools if they fell into a special talents or high risk category. And as of 1982, the Board required high school graduates to complete a group of college preparatory courses as an admissions prerequisite.

The college preparatory course requirement applies to all of Mississippi's public universities but the ACT exception is more liberal at the historically black institutions. The historically white institutions may enroll a number of students not to exceed five percent of the previous academic year's freshmen class under the talented or high risk exception.[12] At Jackson State Univer-

10. ** In 1985–86, Jackson State University enrolled 59% black, 13.3% white, and 27.7% other-race pupils. For 1973–74, Mississippi State University and the University of Southern Mississippi are averages of 1972–73 and 1974–75 data because 1973–74 data are not available.

11. *Ayers*, 674 F.Supp. at 1555.

12. The record suggests that the availability of the high risk exceptions at the historically white schools were not well publicized in their recruiting materials. The president of the University

sity, however, the limit is eight percent and at Alcorn State University and Mississippi Valley State University the limit is ten percent.

Apart from the ACT exception, the prerequisites for admission to Mississippi's public universities are thus the completion of a core curriculum in high school and a minimum score on the ACT which varies with the institution. Presently, the minimum score is 15 at the historically white institutions and 13 at the historically black institutions.[13] Completion of these requirements allows automatic admission.

However, the organization that developed the ACT, the American College Testing Program, advises colleges to use the ACT in conjunction with other considerations so that a whole picture of a student can be assessed rather than one based solely on a standardized test. In the case of minority candidates, the American College Testing Program stresses the inadequacy of the ACT score as the sole criterion for admission:

> Because many factors (e.g., socioeconomic status, differences in educational opportunities, culture, etc.) can potentially affect the test performance of many students who are members of minority groups, ACT believes that assessment for the purpose of college admissions should reflect as complete a picture as possible of students and should include other information in addition to test scores.... *In the case of minority students whose prior educational opportunities have been limited, it becomes especially appropriate to make use of the total scope of information—cognitive as well as non-academic—provided by the ACT assessment.*[14]

Moreover, ACT policies state that "investigation[s] of differential validity for subgroups of ... minority/non-minority [applicants]" should be done where possible.[15] This type of admissions investigation refers to the effectiveness of ACT scores in predicting college success for black as opposed to white applicants. Apparently, ACT score data should not be used as the sole criterion for admission/selection decisions especially regarding minority candidates. It is thus no surprise that ACT provides without charge, materials allowing a more accurate selection of individual students utilizing high school grades. The state universities of Mississippi, however, continue to consider only the single ACT score to define the automatic admission pool.

C. *The Relative Composition of the Faculties*

Mississippi's public universities had the following percentages of black faculty in 1985–86:[16]

of Southern Mississippi testified that he was reluctant to advertise the existence of the exceptions, and that the University of Southern Mississippi did not encourage applicants with less than 15 on the ACT to apply. Students with scores below 15 were automatically rejected. Their record was then reviewed at a later time in the spring or summer to determine if a department had requested a particular student's admission.

The other historically white schools do not appear to admit large numbers of students with ACT scores below 15. In 1986, applicants with less than a 15 composite score on the ACT accounted for approximately nine percent of the entering class at Delta State University; approximately five percent at Mississippi State University; approximately four percent at the University of Mississippi, and zero percent at Mississippi University for Women. In contrast, over 50% of the freshmen admitted to each of the historically black institutions that year scored less than 15 on the ACT.

13. In 1985–86, roughly 7 of 10 white high school graduates and 3 of 10 black high school graduates scored 15 or higher on the ACT.

14. Board exhibit 186 at 6–7 (emphasis added).

15. Plaintiff exhibit 350.

16. Only 60 of the 2,563 faculty employed by the historically white institutions during the 1985–86 school year were black. Yet Dr. Lucious Williams, Assistant Vice Chancellor for Academic Affairs, maintained that the University of Mississippi, from about 1983–86, kept a minority faculty vita bank with about 200 vita on file on an annual basis.

There also appears to be a disparity between the extent of the faculty's education at the historically white institutions and the historically black institutions:

Historically White Institutions:	
University of Mississippi	1.5%
Mississippi State University	2.3
University of Southern Mississippi	2.4
Mississippi University for Women	1.9
Delta State University	5.0
Historically Black Institutions:	
Jackson State University	67.3%
Alcorn State University	67.9
Mississippi Valley State University	73.5

Similar to racial composition, the variation in faculty salaries between the historically white institutions and the historically black institutions is vast.[17]

Historically White Institutions:	1979–80	1986–87
University of Mississippi	$20,794	$30,757
Mississippi State University	21,153	31,957
University of Southern Mississippi	19,817	31,964
Mississippi University for Women	17,836	26,507
Delta State University	17,265	26,213
Historically Black Institutions:	**1979–80**	**1986–87**
Jackson State University	$18,047	$26,669
Alcorn State University	16,019	21,291
Mississippi Valley State University	15,546	22,746

The district court justified the disparities in racial composition by referring to the shortage of qualified minority applicants for faculty positions.[18] For example, a statistic cited by the district court indicates that from 1977 to 1982, out of 1,067 Ph.D.'s awarded in chemical engineering in the United States, only 6 or less than one percent were awarded to blacks; out of 1,679 Ph.D.'s awarded in electrical engineering, only 29 or less than two percent were awarded to blacks; and in European history, a field included within the social sciences where blacks are generally best represented, out of 1,165 Ph.D.'s, only six or less than one percent were awarded to blacks.[19] Moreover, the district court continued, both businesses and other educational institutions compete for the number of blacks with terminal degrees.[20]

The district court's explanation cannot, however, be understood without reference to the Board's 1974 Plan of Compliance (the "Plan"). In the late 1960's, the United States Department of Health, Education, and Welfare ("HEW") requested the State of Mississippi and the Board of Trustees to submit a proposal to desegregate Mississippi's university system. The Board responded by submitting the Plan in 1974. The objective of the Plan was to increase the enrollment and employment of minorities

Historically White Institutions*

	Total	% Full Professors	% Instructors	% with Doctorate
UM	673	25.9%	24.4%	59.0%
MSU	895	42.8	6.5	70.0
USM	675	26.4	12.9	64.4
DSU	203	32.0	20.7	52.7
MUW	129	35.7	14.0	52.7

Historically Black Institutions**

	Total	% Full Professors	% Instructors	% with Doctorate
JSU	359	22.6%	16.7%	64.9%
ASU	174	10.9	43.1	46.6
MVSU	138	18.8	21.7	42.0

* The acronyms for the historically white institutions are: (1) UM for the University of Mississippi; (2) MSU for Mississippi State University; (3) USM for the University of Southern Mississippi; (4) DSU for Delta State University; and (5) MUW for Mississippi University for Women

** The acronyms for the historically black institutions are: (1) JSU for Jackson State University; (2) ASU for Alcorn State University; and, (3) MVSU for Mississippi Valley State University

17. United States exhibit 694(q).

18. *Ayers*, 674 F.Supp. at 1563.

19. *Id.* at 1537.

20. *Id.* at 1538.

at the public universities of Mississippi. The Plan made projections for minority student enrollment and faculty and administration employment for the years 1973–81.

Significantly, the Plan accounted for matters that the district court found to excuse the Board's failure to hire more minority faculty. The Plan stated that "[t]he projections in regard to faculties of [the historically white institutions] take into account the limited supply of qualified black faculty. Institutions of higher learning throughout the nation, as well as business and industry, are vigorously seeking well-trained and highly qualified black employees." [21] The legislature, however, always under-funded the Plan. Predictably, the Plan did not change the racial composition of the respective faculties or administrations.[22]

D. *Institutional Mission and Academic Programs*

In 1980, the Board began to review all non-doctoral programs to define the role and scope of its public universities. The resulting "mission statements" classified the universities into three categories for funding purposes: comprehensive, urban, and regional. The Board designated Mississippi State University, the University of Mississippi, and the University of Southern Mississippi, historically white institutions, as comprehensive universities. The comprehensive designation meant that these institutions offered a greater number and higher level of degree programs than did the remaining universities and that each institution was expected to offer a number of programs on the doctoral level but not in the same disciplines.

The only university designated "urban" was Jackson State. Jackson State's role is the service of the urban community, that is, the City of Jackson. Alcorn State University, Delta State University, Mississippi University for Women, and Mississippi Valley State University received the regional designation. The regional designation signifies a more limited programmatic focus. The Board expects each regional institution to restrict course offerings to undergraduate instruction.

1. *Program Offerings*

The Plan listed the programs available as of 1973–74:

Historically White Institutions[23]

	Bachelors	Masters	Specialist	Doctoral	Other	Total
UM	62	45	7	28	0	142
MSU	94	68	18	45	0	225
USM	108	73	27	37	0	245
MUW	37	14	9	0	1	62
DSU	34	13	4	0	0	51
Historically Black Institutions						
ASU	28	0	0	0	0	28
JSU	38	23	1	0	0	62
MVSU	26	0	0	0	1	27

21. United States Exhibit 1 at page 12.

22. One objective of the Plan was to increase the employment of black administrators. At the historically white institutions, six of the 393 administrators (1.5%) were black at the time of the Plan. In 1983, nine years after the Plan was enacted, the percentage of black administrators for each institution was as follows:

Historically White Institutions:	
University of Mississippi	2.9%
Mississippi State University	0.7%
University of Southern Mississippi	2.0%
Mississippi University for Women	0.0%
Delta State University	0.0%
Historically Black Institutions:	
Jackson State University	94.1%
Alcorn State University	96.7%
Mississippi Valley State University	92.5%

Moreover, in 1986, at the highest administrative levels, the historically white institutions reported 22 officers, who were all white, despite a turnover of 15 positions since 1981. The historically black institutions had nine black officers and one white officer.

23. *See supra* note 16 for the meaning of the acronyms.

The statistics indicate that the three white comprehensive universities offered more programs than the historically black universities. The historically black universities offered only 6.2% or 24 of the 388 graduate programs. The white comprehensive universities offered all 110 doctoral programs. Alcorn State University and Mississippi Valley State University were limited to undergraduate instruction. As of 1986, although change had occurred, this pattern of program offerings remained discernable. The schools ranked as follows regarding total programs offered:

	Total Programs
Mississippi State University	151
University of Mississippi	138
University of Southern Mississippi	124
Jackson State University	73
Delta State University	57
Alcorn State University	39
Mississippi University for Women	27
Mississippi Valley State University	17

No historically black institution in 1981 or 1986 offered a professional degree in programs such as law, medicine, dentistry, or pharmacy. The historically black institutions, on average, offered fewer graduate programs and fewer fields of study than did the historically white schools, and, had a smaller number of their programs accredited.[24]

24. Disparities in program offerings between the historically black institutions and the historically white institutions continued to exist in 1985 and 1986 despite the promise of the Plan to give the historically black institutions priority for new programs. From 1975–86, the historically black institutions ranked lowest in the number of new programs approved by the Board:

Mississippi State University	22
Mississippi University for Women	17
University of Southern Mississippi	16
Jackson State University	15
Delta State University	15
University of Mississippi	14
Mississippi Valley State University	6
Alcorn State University	2

Although an institution's refusal or failure to request new programs could affect these rankings, they suggest that the Board did not make an affirmative effort to place new programs at the historically black universities.

In 1986, the institutions ranked as follows among other criteria:

	Historically White Institutions					Historically Black Institutions		
Criteria	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Number of Bachelor Programs	3	1	2	4	7	5	6	8
Number of Graduate Programs	1	2	2	5	7	4	6	7
Total Programs	2	1	3	5	7	4	6	8
Fields-Bachelors	2	2	1	4	6	5	6	8
Fields-Masters	2	3	1	5	7	4	5	7
Fields-Doctorate	1	3	2	4	—	4	—	—
Library Volumes	3	2	1	6	5	4	7	8
Percentage of Faculty with Doctorate	2	1	4	3	7	5	5	8

2. *Program Duplication*

After the 1980 review, the Board ordered a substantial decrease in degree programs at both the historically black and the historically white institutions. These reductions affected the unnecessary program duplication existing between the universities. Unnecessary duplication refers to the duplication of programs considered nonessential to a liberal arts education.[25]

The historically white institutions, however, continue to unnecessarily duplicate programs offered at the historically black institutions. At the bachelors level, the historically white institutions unnecessarily duplicated 34.6% of the 29 programs offered by the historically black institutions as of 1985–86.[26] At the masters level, the historically white institutions unnecessarily duplicated nine of ten programs offered by the historically black institutions during the same period.[27]

The figures remain approximately the same when the white comprehensive universities are compared to the historically black universities. The district court found that the white comprehensive universities duplicated 32.7% of the programs offered by the historically black universities.[28] And at the masters level, the white comprehensive universities unnecessarily duplicated 86.2% of the program offered by the historically black universities.[29]

There is also unnecessary duplication between the white comprehensives and Jackson State, the historically black institution with the urban designation. In 1986, Mississippi State University, the University of Mississippi, and the University of Southern Mississippi, each unnecessarily duplicated over 30% of the bachelor's level programs at Jackson State, including degree programs in such fields as Banking and Finance, Social Work, and Law Enforcement.

Moreover, a considerable amount of unnecessary duplication among the black and white universities remains even if duplication between the comprehensive and non-comprehensive universities is eliminated from the analysis. Thirty-eight percent of the bachelor's level programs at Mississippi Valley were unnecessarily duplicated at Delta State, including degree programs in such fields as Business Management and Administration and Law Enforcement.

3. *Off Campus Offerings*

The historically white universities opened three off-campus centers in Jackson, Natchez, and Vicksburg, Mississippi near Jackson State University and Alcorn State University during the 1950's and 1960's. The historically white universities' placement of these centers in close proximity to the historically black universities was one aspect of the racially dual system of higher education in Mississippi existing at the time the University of Mississippi was forced to admit James Meredith.[30] In Jackson, the University of Mississippi, Mississippi State, and the University of Southern Mississippi began offering courses at off-campus cen-

Criteria	UM	MSU	USM	DSU	MUW	JSU	ASU	MVSU
Percentage of Faculty with Degree from Research University	1	2	4	5	8	3	6	6
Average ACT Score	1	2	5	4	2	7	5	8

See supra note 16 for the meaning of the acronyms.

25. In contrast, necessary duplication refers to the idea that every campus needs to teach basic courses fundamental to a proper education. Core subjects such as English, Mathematics, and History are thus not counted in determining "unnecessary" program duplication.

26. *Ayers*, 674 F.Supp. at 1541.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 1551.

ters, located near Jackson State University, with the Board's permission, in 1951, 1961, and 1964 respectively. The three centers merged into what is presently the Mississippi University Center (the "University Center") in Jackson in 1966. The Board granted permission to grant degrees in 1972. As of 1981, seventy-six percent of the bachelors degree programs and 90% of the masters degree programs at Jackson State University were also offered at the University Center. Currently, however, Jackson State University enjoys on-campus privileges at the University Center and retains veto authority over all programs offered.[31] The historically white universities offer only limited graduate programs and unique courses.[32]

In 1962, the University of Southern Mississippi opened a resident center, the Natchez Center, approximately 40 miles from Alcorn State University.[33] The Center initially offered three years of undergraduate work, but the Board subsequently authorized the award of baccalaureate degrees in elementary and secondary education and business administration. These degrees were also offered by Alcorn State.[34] As of 1981, the Natchez Center offered twenty percent of the bachelors degree programs and 66% of the masters degree programs available at Alcorn State. At present, the University of Southern Mississippi offers only noncredit extension courses at the Natchez Center.

Mississippi State University opened the Vicksburg Center in 1952. The center offered courses for local school teachers. In 1979, the Board authorized Alcorn State to offer several courses at the Vicksburg Center. A consortium arrangement between the two schools was approved the next year.

31. *Id.* at 1542.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Meredith* took judicial notice of this practice in 1962. *Id.* at 1551.

E. *Funding*

The legislature annually appropriates funds to Mississippi's public universities for basic educational and operating activities. The Board applies a formula to this appropriation to determine the level of support for each institution. The variables in the formula include the number of student credit hours for the previous year, field and level of instruction, and the Board-designated mission of the university. Under this formula, the comprehensive universities receive the most funds per student credit hour; the regional universities receive the least; and Jackson State, the urban university, falls in the middle.

Historically, the Board under-funded the black institutions to maintain a racially segregated system.[35] As a result, the historically white institutions received and spent more money on a per student basis.[36]

Average Total Education and General Income Per Student

	1960	1980	1986
Historically White Institutions	$1,368	$5,547	$8,934
Historically Black Institutions	$ 699	$4,354	$6,171

Average Total Education and General Expenditures Per Student

	1960	1980	1986
Historically White Institutions	$1,351	$5,412	$8,516
Historically Black Institutions	$ 718	$4,310	$6,038

These long term disparities in funding created an accumulated deficit to the disadvantage of the historically black institu-

36. Dr. Larry Leslie, the U.S. expert on funding, testified that the predominantly white institutions receive and spend more money on a per student basis. Dr. Leslie's analysis included revenues generated by more recent Board policies and practices which the district court found more favorable to the historically black institutions.

tions. The funding formula employed by the Board does not, however, account for the historical disparity. Disparities in funding result from the designation of an institution as regional, urban, or comprehensive, with the latter receiving the most funds. But, as the district court stated, the three historically white institutions received the comprehensive designation in 1981. Channeling the most money to the comprehensive institutions thus perpetuated the discriminatory funding practices rebuked by this Court as de jure in 1962.[37]

F. *Facilities*

The district court found that the quality of an institution's facilities affects the administration of its academic programs and its attractiveness to students. From 1964–65 to 1984–85, fulltime enrollment in Mississippi's universities nearly doubled. The district court stated that Mississippi's response to this increase was inconsistent in the early years because the historically white institutions received a disproportionate share of the funds allocated for facility expansion.[38] In addition, the district court did not find any correlation between the racial identity of the institutions and the amount of campus space or the quality of the particular institutions' facilities.[39]

The district court's findings appear predicated on the testimony of the defendant's expert, who limited his analysis to the amount of space at each of the universities [40] and to the physical conditions of the facilities. The district court did not, however, determine whether the additional funds spent for facilities at the historically black institutions in recent years changed their character since the *Brown* decision in 1954 when they were considered inferior to the historically white institutions.[41]

Funds bought more in the earlier years when more money was spent for the white institutions' facilities. According to trial testimony, this funding disparity means that the space at the black institutions was not a generous and lacked the ambiance of the white institutions. Thus the replacement values, the cost of replacing a facility, is useful in determining whether disparities in funding currently exist between the two types of institutions. The replacement values at the historically white institutions still exceed the replacement values at the historically black institutions:

	1964–65	1984–85	1964/65–1984/85
Historically Black Institutions			
ASU	$10,701,096	$49,915,240	$39,214,144
JSU	12,242,349	74,315,678	62,073,329
MVSU	12,229,539	43,837,040	31,607,501
Total	35,172,984	168,067,958	132,894,974
Historically White Institutions			
DSU	$11,992,239	$63,169,993	$51,177,754
MSU	62,245,953	305,721,970	243,476,017
MUW	22,434,678	63,485,898	41,051,220
UM	48,405,525	199,526,432	151,120,907
USM	44,143,743	120,193,938	76,050,195
Total	189,222,138	752,098,231	562,876,093

37. *Ayers*, 674 F.Supp. at 1551.

38. *Id.* at 1547.

39. *Id.* at 1561–62.

40. *Id.* at 1548–50. The district court focused on square footage per student. *Id.* This measure, however, does not account for the quality, usefulness, efficiency, or, perhaps most importantly, the aesthetics of a structure. A large warehouse with concrete floors and tin walls may have the same square footage as the British Museum but that does not give the two facilities the same potential to pleasurably exhibit art.

41. *Id.* at 1549.

II. THE DECISION BELOW

The scope of a state's duty to eliminate the effects of former de jure segregation in its public universities remains in question. The answer rests upon an interpretation of the Supreme Court's decision in *Green v. School Board of New Kent County.*[42] The standard implemented by the *Green* Court places an affirmative duty on states to eliminate all of the "vestiges" or effects of de jure segregation "root and branch."[43] One line of authority has applied this standard in the university context. *Norris v. State Council of Higher Education*, 327 F.Supp. 1368 (E.D.Vir.1971) aff'd per curiam sub nom. *Board of Visitors of the College of William and Mary in Virginia v. Norris*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971); *Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986); *U.S. v. Louisiana*, 692 F.Supp. 642 (E.D.La.1988); *Sanders v. Ellington*, 288 F.Supp. 937 (M.D.Tenn. 1968).

In the present case, however, the district court applied a different standard based on an alternative reading of *Green*. This standard requires a state to implement, in good faith, race neutral policies and procedures [44] instead of uprooting the vestiges of segregation root and branch. The district court derived this standard from two decisions; the Supreme Court's per curiam affirmance of a three judge district court in *Alabama State Teachers Association v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), aff'd per curiam, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969) (Douglas, J., dissenting) [45] and the opinion of a five member majority in *Bazemore v. Friday*, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986).

The district court in *Alabama State Teachers Association*, ("*ASTA*") distinguished between higher education and secondary and elementary education.[46] The *ASTA* court reasoned that the scope of the state's duty in the face of former de jure segregation should be based on the relatively narrow good faith standard because in the area of higher education, student's themselves choose where to attend college in contrast to elementary and secondary school where attendance is compulsory.[47] In the present case, the district court found support for *ASTA*'s distinction between choice in higher education and compulsory attendance in secondary and elementary education in the Supreme Court's decision in *Bazemore v. Friday.*[48]

Bazemore, in part, involved a challenge to the racial composition of the North Carolina Extension Service 4-H and Homemaker clubs. These clubs were segregated by law prior to 1965. The Court held that the existence of single race 4-H and Homemaker clubs did not violate the equal protection clause even though the clubs had a history of de jure segregation.[49] The Court reached this holding because the state had adopted a policy permitting potential members to choose which club to join in response to the Civil Rights Act of 1964.[50] The heart of the Court's five paragraph opinion was based on a comparison to *Green*.

> *Green* ... held that voluntary choice programs in the public schools were inadequate and that the schools must take

42. 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968)

43. *Id.* at 438, 88 S.Ct. at 1694.

44. *Ayers*, 674 F.Supp. at 1554.

45. In a footnote in his dissent, Justice Douglas stated that the district court's rationale that the duty to desegregate a university system should be more narrow than the duty to desegregate an elementary school system "is on its face an amazing statement as the forerunners of *Brown v. Board of Education*....were cases involving higher education. *See Missouri ex rel. Gaines v. Canada*, ... *Sweatt v. Painter*, ...[and] *McLaurin v. Oklahoma State Regents for Higher Education.*"

46. *ASTA* 289 F.Supp. at 788.

47. *Id.*

48. 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986).

49. *Id.* at 407-09, 106 S.Ct. at 3012-13.

50. *Id.*

affirmative action to integrate their student bodies. It was the effective predicate for imposing busing and pupil assignment programs to end dual school systems, but it has no application to the voluntary associations supported by the Extension Service. Even if the service in effect assigned blacks and whites to separate clubs prior to 1965, it did not do so after that time. While schoolchildren must go to school there is no compulsion to join 4-H or Homemaker Clubs; and while School Boards customarily have the power to create school attendance areas and otherwise designate the school that particular students may attend, there is no statutory or regulatory authority to deny a young person the right to join any club he or she wishes to join.... And however sound *Green* may have been in the context of public schools, it has no application to this wholly different milieu.[51]

Bazemore thus distinguished the compulsory attendance requirement of the elementary and secondary schools at issue in *Green* from the voluntary membership characteristic of the 4-H and Homemaker clubs. The distinction is predicated on student choice.

The district court used this distinction to analogize the choice facing the students of the public universities of Mississippi in the present case to the choice facing the students who wished to join 4-H and Homemaker clubs in *Bazemore*. The students in *Bazemore* could choose which 4-H or Homemaker club to join and the students in the present case could choose which Mississippi public university to attend.[52] The district court thus held that under the free choice distinction created in *ASTA* and supported by *Bazemore*, Mississippi did not violate the equal protection clause. The court reached this holding because Mississippi enacted an open admissions policy similar to the free choice policy enacted by North Carolina in *Bazemore*.

III. THE LAW

A. *The Geier Decision*

[1] We reject the district court's reading of *Green* and adopt the interpretation applied by the Sixth Circuit in *Geier v. Alexander*.[53] The *Geier* court held that a state has an affirmative duty to eliminate all of the "vestiges" or effects of de jure segregation, root and branch, in a university setting.[54] The searching inquiry demanded by *Geier* implies that the federalism and separation of powers concerns involved in finding a state actor liable under the equal protection clause will not prevent a federal court from demanding unitary status in a public university system. This reading of *Green* punctuates our constitutional mandate to uproot the entrenched results of racial subjugation. The evolution of cases from *Plessy v. Ferguson*[55] to *Brown v. Board of Education*[56] requires no less.

Our endorsement of the *Geier* Court's rationale is, however, limited. The *Geier* Court, in deciding to apply *Green* in the public university forum, distinguished *Bazemore*. The court stated that:

> While membership in 4-H and Homemaker Clubs offers a valuable experience to young people and families, particularly in rural areas, it cannot be compared to the value of an advanced education. The importance of education to the individual and the interest of the state in having its young people educated as completely as possible indicate clearly that the holding in *Green* rather than that of *Bazemore* applies.... Nothing in the *Bazemore* decision, where the compelling interest of a state in the education of its citizenry was not involved, requires us to reexam-

51. *Id.* at 408, 106 S.Ct. at 3013.

52. *Ayers*, 674 F.Supp. at 1553.

53. 801 F.2d 799 (6th Cir.1986).

54. *Id.* at 804.

55. 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

56. *Id.* at 804.

ine these holdings [*Green* or *Geier v. University of Tennessee*][57]

This rationale for distinguishing *Bazemore* is sound to the extent it suggests that *Bazemore* is factually distinguishable from cases involving the effects of de jure segregation in public universities. The *Bazemore* majority stated that:

> [t]he district court could find no evidence of any discrimination since that time [the time the open admissions policy was enacted] in either the services or membership and concluded as a matter of fact that any racial imbalance existing in any of the clubs was the result of wholly voluntary and unfettered choice of private individuals.[58]

The outcome in *Bazemore* may thus rest on the absence of evidence of discrimination. In contrast, the record in the present case is replete with the disease. The Court in *Bazemore* only examined an arm, the 4-H and Homemaker clubs, of the body that is the North Carolina university system. This macro-view did not call the Court to the operating table although a micro-view of the case before us, which reveals that the public universities of Mississippi are infected throughout, might prompt major surgery.

We cannot, however, agree with the *Geier* rationale to the extent it suggests that potential members of 4-H and Homemaker clubs are any less stigmatized than university students by the stereotypes of racial inferiority conveyed through the effects of de jure segregation. The *Geier* court justified the holding in *Bazemore* by arguing that the state's interest in higher education outweighed the value of the experience provided by membership in 4-H and Homemaker clubs.[59] This argument, that a state's duty to eradicate the effects of de jure segregation depends on the importance that the public places on a particular activity, would require this court to create a hierarchy of values at odds with the moral choices inherent in the forerunners of *Green: McLaurin*, *Sweatt*, and *Brown*.[60] These cases demonstrate that law should be society's mirror casting reflections of individual dignity upon all.

B. *The Evolution of Plessy to Brown*

The values embodied in *Brown* provide the foundation for the searching inquiry demanded by *Green* in the public university forum. The *Brown* Court's rubric, that separate is inherently unequal, symbolizes the need for a rule of law to serve as a moral ambition in a society fraught with discrimination. *Brown*, however, cannot be understood in isolation. A visit with its ancestors, *Plessy v. Ferguson*, *Missouri ex rel. Gaines v. Canada*, *Sweatt v. Painter*, and *McLaurin v. Oklahoma* is necessary.[61]

Plessy was an action brought by a black man desiring to sit in a railway car designated for whites only under Louisiana law. The Court held that Louisiana's racially segregative law did not violate the fourteenth amendment.[62] In response to Mr. Plessy's argument, that separate facilities stamped him with a badge of racial inferiority, the Court stated:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act but solely because the colored

57. *Id.* at 805; *See Green* 391 U.S. at 430, 88 S.Ct. at 1689 and *Geier v. University of Tenn.*, 597 F.2d 1056 (6th Cir.1979).

58. *Bazemore*, 478 U.S. at 407, 106 S.Ct. at 3012.

59. *Geier*, 801 F.2d at 805.

60. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 (1938); *McLaurin v. Oklahoma State Regents for Higher Educ.*, 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950); *Sweatt v. Painter*, 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *Brown*, 347 U.S. at 483, 74 S.Ct. at 686. Similarly, we disagree with the three judge district court in *United States v. Louisiana*, 692 F.Supp. 642, 656 (E.D.La.1988) to the extent, and only to the extent, it borrowed this portion of the *Geier* analysis to distinguish *Bazemore*.

61. *Plessy*, 163 U.S. at 537, 16 S.Ct. at 1138; *Missouri ex rel. Gaines*, 305 U.S. at 337, 59 S.Ct. at 233; *Sweatt* 339 U.S. at 629, 70 S.Ct. 848; *McLaurin*, 339 U.S. at 637, 70 S.Ct. at 851.

62. *Plessy*, 163 U.S. at 550, 16 S.Ct. at 1143.

> race chooses to put that construction upon it.... The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals.... *Legislation is powerless to eradicate racial instincts.*[63]

Plessy is clearly at odds with the history surrounding the fourteenth amendment.

> The defeat of the South in the Civil War brought forth the Second Revolution in America's history, a turbulent era referred to as Reconstruction. Black participation in Southern public life after 1867 was the most radical development of the Reconstruction years, *a massive experiment in interracial democracy* without precedent in the history of this or any other country that abolished slavery in the nineteenth century.... *The transformation of slaves into* free laborers and *equal citizens* was the most dramatic example of the social and political changes unleashed by the Civil War and emancipation.... Reconstruction was not merely a specific time period, but the beginning of an extended historical process: *the adjustment of American society to the end of slavery.*[64]

The Civil War altered the mores of our country. Blacks were to be equal to whites. The fourteenth amendment, enacted one year later, was the embodiment of this idea of equality clothing blacks, for the first time, with the fabric of the Constitution.

The *Plessy* Court abandoned its constitutional duty to influence the folkways of the South to comport with the mores now enshrined in the fourteenth amendment; mores irreconcilable with the separate but equal rule announced by the Court. This rule reinforced the social stigmatization of blacks with racial separation by force of law. Stereotypes of racial inferiority were perpetuated by galvanizing instead of transforming the perception that whites are superior. The Court stated that it was the perceptions of blacks that created any badges of inferiority when in fact it was Mr. Plessy who was imploring the Court to bridle the racial beliefs of the white majority that he so painfully endured.

Plessy is thus a decision that maintains the status quo perceptions of a prejudiced society. The Court failed to begin to bring these perceptions in line with the message of the Civil War that blacks were equal to whites. The constitutional rights of the minority did not animate the Court's analysis.

The constitutional rights of blacks began to expand in part through the notion that discrimination law should serve as a symbol to influence majority values. *Missouri ex rel. Gaines v. Canada.*[65] In *Gaines*, the University of Missouri School of Law denied Lloyd Gaines, the plaintiff, admission because he was black. The University informed him that he could attend another institution in an adjacent state at Missouri's expense. Instead, Gaines sued the state for admission.

The Supreme Court held that Gaines had to be admitted to the School of Law. The Court reasoned that:

> The basic consideration is not as to what sort of opportunities, other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color.... [I]t would nevertheless be the constitutional duty of Missouri when it supplied such courses [in legal education] for white students to

63. *Id.* at 551, 16 S.Ct. at 1143 (emphasis added).

64. E. Foner, *Reconstruction—America's Unfinished Revolution 1864–1877* xxv–xxvii (1988) (emphasis added).

65. 305 U.S. 337, 59 S.Ct. 232.

> make equivalent provision for negroes.... [T]he essence of a constitutional right is that it is a personal one. It is the individual who is entitled to the equal protection of the laws.[66]

The *Gaines* rationale differs significantly from the reasoning of *Plessy*. In *Gaines*, the Court placed an affirmative duty on the state to redress the constitutional rights of a black student. The Court considered these rights personal to the individual. Unlike the Court in *Plessy*, the analysis of the *Gaines* Court was thus animated by a concern for minority rights. This analysis suggests, moreover, that segregation law was beginning to empathize with the perceptions of blacks.

The eradication of the separate but equal doctrine, initiated by the *Gaines* Court, continued in two other cases involving university education, *Sweatt v. Painter*,[67] and *McLaurin v. Oklahoma State Regents for Higher Education*.[68] The question presented in both cases was: "[t]o what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university?[69]

In *Sweatt*, the University of Texas School of Law denied admission to a prospective law student because he was black.[70] He sued the University and won admission.[71] In response, the University created a law school for black students in the basement of a state office building.[72] The black law school had a "faculty of five full time professors; a student body of 23; a library of some 16,500 volumes serviced by a full time staff; a practice court and a legal aid association; and one alumnus who ha[d] become a member of the Texas bar."[73]

The trial court found that the school offered "privileges, advantages and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas."[74] The Supreme Court, however, rejected these findings. The Court stated that:

> we cannot find substantial equality in the educational opportunities offered white and Negro law students by the state.... With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.... It is fundamental that these cases [addressing race distinctions in graduate education] concern rights which are personal and present.[75]

McLaurin was decided the same day as *Gaines*. G.W. McLaurin, a black student, applied to the University of Oklahoma to obtain a doctorate in education.[76] The University prohibited McLaurin from enrolling due to an Oklahoma statute forbidding the operation of a school attended by both blacks and whites.[77]

McLaurin sued the University for admission.[78] In response, the Oklahoma legislature amended the statute to admit black students under the condition that instruction "shall be given at such colleges or institutions of higher education upon a segregated basis."[79] Although the University admitted McLaurin under this amendment, he was

66. *Missouri ex rel. Gaines*, 305 U.S. at 349, 59 S.Ct. at 232.

67. *Sweatt*, 339 U.S. at 629, 70 S.Ct. at 848.

68. *McLaurin*, 339 U.S. at 637, 70 S.Ct. at 851.

69. *Sweatt*, 339 U.S. at 631, 70 S.Ct. at 849.

70. *Id.*

71. *Id.* at 631–32, 70 S.Ct. at 849.

72. *Id.* at 632, 70 S.Ct. at 849.

73. *Id.* at 633, 70 S.Ct. at 850.

74. *Id.* at 632, 70 S.Ct. at 849.

75. *Id.* at 634–35, 70 S.Ct. at 850–51.

76. *McLaurin*, 339 U.S. at 638, 70 S.Ct. at 852.

77. *Id.*

78. *Id.*

79. *Id.*

required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and to eat at a different time from the other students in the school cafeteria.[80]

The three judge district court held that this treatment did not violate McLaurin's right to the equal protection of the laws.[81] The Supreme Court reversed. The Court reasoned that:

> [The restrictions] signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.... There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar.... [T]he removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant [McLaurin] of the opportunity to secure acceptance by his fellow students on his own merits.... We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws.[82]

The operative ideas in *Gaines* were brought to fruition by *Sweatt* and *McLaurin*. The rights of a black individual seeking admission to a white university labeled personal by the *Gaines* Court were considered the rights of a "significant and other segment of society" in *Sweatt*.[83] The *Sweatt* Court thus heeded the message of the Civil War by recognizing the rights of the black minority in their entirety. The implication is that blacks were entitled to complete participation in community life.

McLaurin developed a critical aspect of this idea by focusing on the intellectual experience of the black student. The Court stated that: "Such restrictions [i.e., the ones isolating McLaurin from the rest of the student body] impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[84] Minority perceptions were at issue reflecting the Court's understanding that the majoritarian regime of separate but equal inflicted messages of inferiority. The reasoning of *McLaurin* thus differs from the reasoning of *Plessy* where the Court, condoning the status quo folkways of the white majority, stated that blacks imposed badges of inferiority upon themselves.

The *McLaurin* Court's most significant recognition, however, is the possibility of using equal protection doctrine to influence these folkways to correspond with the message of equality wrought by the Civil War. This possibility evolved from the duty placed on the state by the *Gaines* Court to redress minority rights. The Court in *McLaurin* stated that: "[t]he removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very

80. *Id.* at 640, 70 S.Ct. at 853. The University altered the conditions under which Mr. McLaurin attended school in the interval between the decision of the district court and the oral argument in the Supreme Court. The "section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, 'Reserved for Colored,' but these have been removed. [At the time of oral argument, McLaurin was] assigned to a seat in the classroom in a row specified for colored students; he [was] assigned to a table in the library on the main floor; and he [was] permitted to eat at the same time in the cafeteria as other students, although here again he [was] assigned to a special table." *Id.*

81. *Id.*

82. *Id.*

83. *Sweatt*, 339 U.S. at 634, 70 S.Ct at 850.

84. *McLaurin*, 339 U.S. at 641, 70 S.Ct. at 853.

least, the state will not be depriving appellant [McLaurin] of the opportunity to secure acceptance by his fellow students on his own merits."[85] *McLaurin* thus recognized that constitutional doctrine might alter societal values unlike the *Plessy* decision which maintained them. In effect, *Plessy* was dead. The Court in *Brown* was now free to etch a tombstone for the grave of separate but equal dug by *Gaines*, *Sweatt*, and *McLaurin*.

Brown transformed the *McLaurin* Court's suggestion, that equal protection doctrine might alter the perceptions of the white majority, into a constitutional mandate. In contrast to the Court in *McLaurin*, the *Brown* Court explicitly recognized that legal segregation caused black students to perceive themselves as inferior: "to separate them [the students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone."[86] The message was that constitutional doctrine must commandeer a social mission to eradicate the stigma conveyed through racial separation by law. The stigma could be eradicated if the decisions of courts removed the legal barriers supporting racial subjugation thereby serving as moral messages to a white majority permeated with discriminatory values. The separate is inherently unequal rule announced by the Court thus reflects disdain towards the source of the perceptions of black inferiority.

The discussion of remedies in *Brown II*[87] illuminates the scope of the rights created in *Brown I*. The Court in *Brown II* stated that:

> In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Historically, equity has been characterized by practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth .... [in *Brown I*]. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.[88]

The remedy in *Brown II* was derived from the personal interest of the student. *Brown I* held that the personal interest of the student was based on perceptions of racial inferiority conveyed through the effects of racial separation by law. The rem-

85. *Id.* at 641–42, 70 S.Ct. at 853–54.

86. Charles Sumner made a similar argument in 1850 that failed to carry the day. In *Brown*, Chief Justice Warren attributed the phrase "separate but equal" in *Plessy* to a Massachusetts case that involved segregated schools in Boston, Massachusetts. *Roberts v. City of Boston*, 59 Mass. 198, 5 Cush. 198 (1850). In *Roberts*, Charles Sumner advocated the cause of five year old Sara Roberts before the Massachusetts Supreme Court, over ten years before the Civil War, arguing that Boston's segregation of black children branded them with a stigma of inferiority. *Roberts*, 59 Mass. at 203–04. In addition, Sumner argued that segregation injured white school children because their "hearts, while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear enduring testimony to this legalized uncharitableness." *See* R. Kluger, *Simple Justice* 75–77 (1977).

87. *Brown v. Board of Educ.*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) (*Brown II*).

88. *Id.* at 300, 75 S.Ct. at 756. "To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." *Id.* at 300–01, 75 S.Ct. at 756–57.

edy, the Court in *Brown II* held, must therefore remove all the effects of de jure segregation. Otherwise, the perceptions of black students would remain distorted and the moral aspirations of "separate is inherently unequal"—the attainment of human dignity for all—would be impugned. This aspiration is why public disagreement, the disagreement of those pleased by the status quo, was not an obstacle to the *Brown II* Court.

C. *Green*

The holding in *Green* [89] cannot be understood without considering *Brown I* and *Brown II*. The *Green* Court held that a state has an affirmative duty to create a unitary school system by eliminating, root and branch, the effects of de jure discrimination.[90] The Court stated that:

> The pattern of separate "white and Negro" schools ... established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed.... It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern excluding Negro children from schools attended by white children. The principle focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools.... Under *Brown II* that immediate goal was only the first step, however. *The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about....*[91]

Under *Green* the creation of a unitary school system is the goal, a goal tantamount to the elimination of the effects of de jure discrimination, root and branch. If a less demanding standard were adopted, images of inferiority would be memorialized with the force of law, contrary to the vision of *Brown*, because vestiges of discrimination would remain unaddressed. *Brown* commands the application of *Green* in all of its fertility to the public university forum.

By comparison, the district court's application of *Green* was circumscribed. According to the district court, a state discharges its constitutional responsibility by implementing in good faith, race-neutral policies and procedures.[92] The district court held that the open admissions policy of Mississippi's public universities satisfied this standard.[93]

The district court reasoned that students themselves choose what college to attend under an open admissions policy in contrast to elementary and secondary schools where attendance is compulsory.[94] This distinction, sustained by *Bazemore*, is based on

89. *Green*, 391 U.S. at 430, 88 S.Ct. at 1690.

90. *Id.* at 437–38, 88 S.Ct. at 1693–94.

91. *Id.* at 435–36, 88 S.Ct. at 1692–93. *See also Dayton Board of Educ. v. Brinkman*, 443 U.S. 526, 537, 99 S.Ct. 2971, 2979, 61 L.Ed.2d 720 (1979) ("Given intentionally segregated schools in 1954, however, the Court of Appeals was quite right in holding that the Board was thereafter under a continuing duty to eradicate the effects of that system...."); *Columbus Board of Educ. v. Penick*, 443 U.S. 449, 460, 99 S.Ct. 2941, 2948, 61 L.Ed.2d 666 (1979) ("The Board's continuing affirmative duty to disestablish the dual system is therefore beyond question."); *Milliken v. Bradley*, 433 U.S. 267, 289–90, 97 S.Ct. 2749, 2761–62, 53 L.Ed.2d 745 (1977) ("More precisely, the burden of state officials is that set forth in *Swann* [*v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971)]—to take the necessary steps to 'eliminate from the public schools all vestiges of state-imposed segregation.' "); *Keyes v. School Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 200, 93 S.Ct. 2686, 2693, 37 L.Ed.2d 548 (1973) ("Rather, we have held that where plaintiffs prove that a current condition of segregated schools exists within a school district where a dual system was compelled or authorized by statute at the time of our decision in *Brown* ... the State automatically assumes an affirmative duty to 'effectuate a transition to a racially nondiscriminatory school system....' ") (citing *Brown I*, 347 U.S. at 483, 74 S.Ct. at 686); *Alexander v. Holmes County Board of Educ.*, 396 U.S. 19, 20, 90 S.Ct. 29, 29, 24 L.Ed.2d 19 (1969) (*per curiam*) ("Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.").

92. *Ayers*, 674 F.Supp. at 1551–54.

93. *Id.*

94. *Id.* at 1552–53.

student choice, or conversely, that students are not compelled to attend college. It assumes that black students possess the same freedom to choose as do white students. Contrary to *Brown*, however, this assumption ignores the effects of past de jure segregation.

The remedial power granted to district courts by *Green* flows from the concept of stigmatization explicated in *Brown*. *Brown* explicitly recognized that vestiges of de jure segregation distort the perceptions of blacks. Blacks do not, therefore, make choices from a tabula rasa. Instead, they choose against a history of racial subjugation with its attendant messages of inferiority. Freedom of choice is not a panacea:

> [t]here is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance.... We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom of choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself.[95]

The district court in the present case and the five member majority in *Bazemore* may also be understood to mean that the searching inquiry of *Green* applies only if attendance at a particular institution is legally compelled unlike public universities or 4-H and Homemaker clubs. This view of choice, however, is also contrary to *Brown*. *Brown* stated that the stigmatizing effects of segregation are not created by legally compelled attendance but rather from the vestiges of legally compelled separation. Thus the lesson of *Brown* is that the malignancy of apartheid does not vanish in state-sponsored forums simply because attendance is voluntary and admittance race-neutral. Courts must not become anesthetized from gazing too deeply into what some believe is the platonic vision of *Bazemore*. *Bazemore*'s vision of a state government is one resurrected from a past marred by racial subjugation without the ashes of its fire-laden history to gray the facade. Unfortunately, this vision rests on the blithe assumption that the moral ambition of *Brown* has been conquered; an egalitarian society where the elixir is choice blended into a grog of neutral admissions policies.

The most abhorrent implication of the idea that the effects of segregation may vary with the admissions and attendance policies of an institution, however, is that black citizens are demeaned with the quality of chameleons. The color of their skin is presumed to change with the structure of an institution where they will see the world as do whites. Thus, any stigmatization that flows from the racial identity of the institutions could only come from the thinking of blacks themselves because they are assumed to be able to self-desegregate. To this extent, *Plessy* is resurrected. The *Plessy* Court stated that:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. *If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.*[96]

Unfortunately, racial prejudice in our society has not so receded. Even if unintended, it flows from a chronicle of subjugation once encouraged by the rule of our law.

These ruminations, however, should not be troubling. The monocular vision of *Bazemore* does not give cause. For history will not let us arrogate the power to do overtly, what we are confident *Bazemore* did not do covertly, overrule *Brown*, *Green*, and a long line of equal protection cases. If these cases are to die, they at least deserve the dignity of a burial.

95. *Green*, 391 U.S. at 439, 88 S.Ct. at 1694.

96. *Plessy*, 163 U.S. at 551, 16 S.Ct. at 1143 (emphasis added).

IV. DISCUSSION

[2] The defendants have not satisfied their affirmative duty under *Green*. *Green* demands the removal of all vestiges of de jure segregation root and branch. The facts in this case, however, demonstrate that roots are spread all over the terrain and that branches create shadows over areas where *Brown* was supposed to usher in rays of sunshine. The badge of inferiority that marks black institutions has not been removed. As such, there remains in Mississippi's higher educational system vestiges of discrimination which distort the perceptions of black students. The racial composition of the student body is not simply the result of student choice.

As the district court stated, the Board adopted the minimum ACT requirement in 1962 precisely because of its adverse effects on blacks.[97] This requirement, presently a 15 for automatic admission to a historically white university, continues to impede most blacks.[98] In 1986, only 3 out of 10 black applicants scored 15 or higher on the ACT. The district court's rationale, educational reasonableness is not a justification. More accurate, less discriminatory means to predict the college performance of blacks exist. Yet Mississippi does not consider high school grades and other noncognitive data in assessing the applications of minority candidates despite the recommendation of the American College Testing program to the contrary.

The ACT exception for special talents or high risk students, which is more liberal at the historically black institutions, exacerbates the discriminatory effect of the minimum ACT score. The reputation of these institutions as inferior is enhanced because admissions qualifications are not as demanding. The exceptions thus perpetuate segregation to the extent that it is easier for blacks to be admitted to a black school. The integration of the historically white universities is not invited. In fact, we question the extent to which the historically white universities publicize the availability of the exceptions.[99]

The racial composition of the faculty and administration of the historically white institutions also has a pernicious effect on the perceptions of blacks. The paucity of blacks on the faculty and administration of the white comprehensive universities allows few black role models at what are considered the superior institutions. Instead, black faculty and administrators are more numerous at the black universities which are perceived as relatively inferior.

The Plan purportedly accounted for the limited supply of black faculty and administrators. By 1986, however, Delta State University, a historically white institution, had the largest percentage of black faculty with five percent. In addition, Alcorn State University and Mississippi Valley State University, historically black institutions, had the smallest percentages of black faculty with doctorates. The Board might have raised the salaries of black faculty and administrators to attract them from the limited pool.

The academic offerings of the various institutions demonstrates that vestiges of de jure discrimination remain entrenched throughout Mississippi's public universities. As of 1986, Alcorn State University and Mississippi Valley State University, historically black, were two of the three institutions ranking lowest in total programs offered and in number of new programs approved by the Board. And, Jackson State University, the black institution with the regional designation, continues to offer fewer courses than any of the white comprehensive universities. As offerings diminish, however, universities are less

97. *Ayers*, 674 F.Supp. at 1555.

98. Mississippi's ACT policy could discourage potential black students from applying to the historically white universities. *Cf. Dothard v. Rawlinson*, 433 U.S. 321, 330, 97 S.Ct. 2720, 2727, 53 L.Ed.2d 786 (1977) ("The application process might itself not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory.").

99. *See supra* note 12.

likely to develop diverse student bodies or unique reputations.

The duplication of non-essential courses [100] compounds the problem. The historically white institutions offer a significant number of the undergraduate and masters-level courses offered by the black institutions. This duplication fosters the continued racial identity of the universities to the extent that students may attend either a black or a white institution.

The historically white universities' placement of branch centers near historically black universities also contributed to the racial identity of the institutions. The branches were a part of Mississippi's de jure plan as of 1962.[101] Their impact is apparent at least through 1981 when the Mississippi University Center offered 76% of the bachelors degree programs and 90% of the masters degree programs offered by Jackson State University. The Natchez Center offered 20% of the bachelors degree programs and 66% of the masters degree programs offered by Alcorn State University in the same year. The centers thus reinforced the racial identity of Jackson State University and Alcorn State University over the 1962–1981 period and probably the current composition of their student bodies.

Until 1962, the Board also maintained a racially segregated university system by underfunding the historically black institutions.[102] Over time, funding disparities produced an accumulated deficit to the disadvantage of the historically black institutions. The Board's funding formula does not account for this historical deficit. Similar disparities exist in the funding of the physical plants. The Board implicitly endorsed all of these funding practices by implementing the mission designations in 1981.

The mission designations placed an ostensibly neutral label on each institution. In reality, however, these labels, comprehensive, urban, and regional, served to officially condone the Board's discriminatory funding practices. The white comprehensive universities received the most funding and offered the most courses before the Board implemented the designations in 1981.[103] The designations, based on the resources existing in 1981, were thus objective labels for past discriminatory practices. Perceptions of inferiority were perpetuated under the fiction of educational reasonableness. The hierarchy of the mission designations, with the three historically white institutions labeled comprehensive, reinforced the image of the white schools as the superior institutions of the state.

Vestiges of de jure segregation permeate the public university system of Mississippi. Admissions policies, the racial composition of the faculty and administration, funding practices, academic offerings, and mission designations all perpetuate a stigma of inferiority. Contrary to the mandates of *Brown* and *Green*, a unitary system has not been achieved.

V. TITLE VI OF THE CIVIL RIGHTS ACT

In addition to their equal protection claim the plaintiffs' [104] claim relief under Title VI of the Civil Rights Act of 1964 [105] and its implementing regulations.[106] Section 601 of Title VI states, in pertinent part, that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activi-

100. *See supra* note 25.

101. *Ayers*, 674 F.Supp. at 1551.

102. *Id.*

103. *Id.*

104. The United States intervened under 42 U.S.C. section 2000h-2 (1989) three months after the private plaintiffs filed their complaint against the state of Mississippi. This provision entitles the United States to the relief that it would have obtained if it had initiated the action.

105. 42 U.S.C. section 2000d et seq. (amended Oct. 21, 1986 Pub.L. 99-506, Title X, section 1003, 100 Stat. 1845; Mar. 22, 1988, Pub.L. 100-259, Title VI, section 606, 102 Stat. 31).

106. 34 C.F.R. sections 100.1–100.13 (1988).

ty receiving federal financial assistance." [107] In essence, Title VI prohibits discrimination that violates the equal protection clause of the fourteenth amendment.[108] At trial, the plaintiffs did not succeed with their Title VI claim because the district court held that the defendants did not breach their affirmative duty under *Green*.

We disagree. The plaintiffs established an equal protection claim. The remaining question is thus whether there has been any discrimination, in the words of Title VI, "under any program or activity receiving federal financial assistance." [109] The quoted phrase was the subject of the Supreme Court's decision in *Grove City College v. Bell*.[110]

The Court in *Grove City* held that Title VI liability is established only with evidence that discrimination occurred in a program or activity specifically supported by federal funds.[111] If a college received federal money in the area of student loans, for example, Title VI could not be used to prevent discrimination in the area of student admissions. Institution-wide discrimination is thus not actionable under *Grove City* when federal financing is program specific. The result in *Grove City* was based on Congressional intent.[112]

Congressional enactments are often mute regarding important questions of statutory interpretation. When Congress decides to speak clearly, however, we must listen with our ears sharply attuned. On March 22, 1988, Congress overrode the President's veto of the Civil Rights Restoration Act of 1987.[113] In effect, Congress shouted across the park to the Supreme Court: "You misunderstood our intention. We want the term 'program or activity' to mean the whole university, not just the student loan program."

Originally, in the 1964 Civil Rights Act, Congress did not define the term "program or activity." The *Grove City* Court's narrow reading of this crucial term, however, moved Congress to reinflate it with the Civil Rights Restoration Act of 1987.[114] The Act states, in pertinent part, that "[f]or proposes of this subchapter, the term 'program or activity' and the term 'program' mean all of the operations of a college, university, or other postsecondary institution, or public system of higher education...." [115]

This section means that it is possible to establish institution-wide discrimination under Title VI when there is federal financing that is program specific. In this sense, the term "program or activity" encompasses the entire college or university. The present case, however, was tried after the 1984 *Grove City* decision but before Congress acted in 1988. It must therefore be determined whether *Grove City* controls the outcome of this case or whether the legislation applies retroactively.

[3] Retroactive application of a statute is appropriate when Congress enacts the statute to clarify the Supreme Court's in-

107. 42 U.S.C. section 2000d (1981).

108. *Ayers*, 674 F.Supp. at 1551 n. 7.

109. 42 U.S.C. section 2000d-4a (1989) (entitled "'Program or activity' defined"). We do not have to decide whether the plaintiff's must prove discriminatory intent instead of discriminatory impact. *Alexander v. Choate*, 469 U.S. 287, 293, 105 S.Ct. 712, 716, 83 L.Ed.2d 661 (1985) (Title VI itself reaches only instances of intentional discrimination although the implementing regulations could allow a disparate impact analysis.). *Cf. Guardians Ass'n v. Civil Service Comm'n of the City of N.Y.*, 463 U.S. 582, 607, n. 27, 103 S.Ct. 3221, 3235, n. 27, 77 L.Ed.2d 866 (1983) (Proof of intentional discrimination is necessary for the recovery of compensatory damages although only proof of discriminatory impact is necessary in a suit to enforce the regulations adopted under Title VI.). Our case involves past intentional discrimination continuing to the present through a breach of the affirmative duty placed on the state by *Green*.

110. 465 U.S. 555, 104 S.Ct. 1211, 79 L.Ed.2d 516 (1984).

111. *Id.* at 570–76, 104 S.Ct. at 1219–23.

112. *Id.* at 563–70, 104 S.Ct. at 1216–19.

113. Pub.L. 100-259, 102 Stat. 28, 42 U.S.C. section 2000d-4a (1988).

114. 42 U.S.C. section 2000d-4a(2)(A) (1988).

115. *Id.*

terpretation of previous legislation thereby returning the law to its previous posture.[116] This rule flows from two of the Supreme Court's canons of statutory construction. First, subsequent legislation declaring the intent of an earlier statute is entitled to great weight.[117] The Civil Rights Restoration Act was specifically enacted to clarify the *Grove City* Court's reading of the term "program or activity" in the Civil Rights Act of 1964. The Senate report accompanying the passage of the Act [118] states that the bill was introduced:

> to overturn the Supreme Court's 1984 decision in *Grove City College v. Bell*... .. The legislative history of the statutes in question shows Congress intended institution-wide coverage.... In enacting the four civil rights statutes, Congress intended that each be broadly interpreted to provide effective remedies against discrimination.... Contrary to the view of the Supreme Court that the language common to these statutes [i.e. 'program or activity'] should be given limited interpretation, Congress intended institution-wide coverage and the executive branch has historically insisted upon this view. It was understood at the outset that the task of eliminating discrimination from institutions which receive federal financial assistance could only be accomplished if the civil rights statutes were given the broadest interpretation.[119]

[4] Second, the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.[120] In the Civil Rights Restoration Act of 1987 itself, Congress stated that:

> certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of ... Title VI of the Civil Rights Act of 1964 and legislative action is necessary to restore the prior consistent and longstanding *executive branch interpretation* and broad, institution-wide application of those laws as previously administered.

The Senate Report and the statements surrounding the passage of the Act thus indicate that Congress intended to clarify the effect of the *Grove City* decision and restore the previous understanding of the words "program or activity" crucial to the efficacy of the civil rights statutes.[121] The Civil Rights Restoration Act of 1987 operates retroactively.

The district court found that Mississippi's public universities receive federal fi-

116. *See Bonner v. Arizona Dept. of Corrections*, 714 F.Supp. 420, 422 (D.Ariz.1989) (Civil Rights Restoration Act of 1987 applies retroactively); *United States v. Berg*, 710 F.Supp. 438, 442 (E.D.N.Y.1989) ("[W]here Congress clearly indicates its intention to reject a recent Supreme Court interpretation and restore the law to its former state, retroactive application of a newly enacted statute is appropriate."); *Leake v. Long Island Jewish Medical Center*, 695 F.Supp. 1414, 1417–18 (E.D.N.Y.1988) (Terms "program or activity" in the Civil Rights Restoration Act of 1987 apply retroactively) aff'd, 869 F.2d 139 (2nd Cir.1989); *Mrs. W. v. Tirozzi*, 832 F.2d 748, 755 (2nd Cir.1987) ("The 1986 amendment in the present case [the Handicapped Children's Protection Act of 1986] simply codifies a congressional purpose long in place which Congress believed the Supreme Court had misinterpreted" so the plaintiffs could bring suit under the Act even though the Act was passed one year after the suit was brought.).

117. *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 380–81, n. 6, 89 S.Ct. 1794, 1801–02, n. 6, 23 L.Ed.2d 371, n. 6 (1969); *Glidden v. Zdanok*, 370 U.S. 530, 541, 82 S.Ct. 1459, 1468, 8 L.Ed.2d 671 (1962) (opinion of Mr. Justice Harlan, joined by Mr. Justice Brennan and Mr. Justice Stewart); *Federal Housing Admin. v. Darlington Inc.*, 358 U.S. 84, 90, 79 S.Ct. 141, 145, 3 L.Ed.2d 132 (1958).

118. There was no house report.

119. S.Rep. No. 100–64, 100th Cong., 2d Sess. 2–5, reprinted in 1988 U.S. Code Cong. & Admin.News 3–7 (bill introduced "to overturn the Supreme Court's 1984 decision in *Grove City College v. Bell* ... and to restore the effectiveness and vitality of the four major civil rights statutes that prohibit discrimination in federally assisted programs.").

120. *N.L.R.B. Hendricks County*, 454 U.S. 170, 177, 102 S.Ct. 216, 222, 70 L.Ed.2d 323 (1981); *N.L.R.B. v. Bell Aerospace*, 416 U.S. 267, 274–75, 94 S.Ct. 1757, 1761–62, 40 L.Ed.2d 134 (1974); *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 381, 89 S.Ct. 1794, 1801, 23 L.Ed.2d 371 (1969); *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965).

121. In addition, Public Law 100–259 does not have an effective date, this is unusual.

nancial assistance. In addition, we stated that Mississippi violated the equal protection clause by breaching its affirmative duty under *Brown* and *Green*. The plaintiffs have therefore established a claim under Title VI.

VI. A GUIDEPOST ON REMAND

The Chinese have said that a thousand mile journey starts with one step. During the twelve year history of this case, there were many steps, but no discernable degrees of progress on the road towards unitary status. Unfortunately, this case lingered, loitered, and lulled for more than a decade.

The fourteenth amendment does not purport to address all areas of life and living. It does, however, set a goal fundamental to the maintenance of a truly democratic society—the removal of racial stigma. Thus even if the roots of prejudice and the effects of segregation run deep, progress is crucial to assure equality for all.

Freedom of choice is a step, and only that, on the road to this goal. And in Mississippi, although choice is neither spurious nor specious, desegregation is not being achieved. In this regard, the prophecy of *Brown*, the pragmatism of *Meredith*, the fertility of *Green*, and the hesitation of *Bazemore* are instructive. These cases affirm that true freedom of choice remains real and corporeal. One is reminded of the remark attributed to President Truman, "If it works, don't fix it." The converse, however, is axiomatic, if it does not work, fix it or abandon it.

But before a unitary status award is made, or even a medal for that honor cast, the court should have the assistance of other disciplines. Psychologists, sociologists, economists, engineers, doctors, and professionals from all relevant areas of learning play a role. Windows must open to ventilate the court room with ideas from the winds of truth. To this end, testimony, depositions, cross examinations and opinions can assist. Only then should the parties come forth with a definite plan for the achievement of unitary status.

The road to unitary status will not be impassable, but it cannot be negotiated without sacrifice and expenditure of treasure. In this case, however, remember that we have not even seen the road signs for the exit to impossibility. We do not ask that justice be done even though the heavens may fall. But if the stigmatizing effects of desegregation are to be vanquished, even if only in increments, the improvement must be continual. No cessation is permissible until the mandate of *Brown* is satisfied. *Brown* prescribed some hesitation as to time, but no hesitation as to result.

Thus if a diminution of what some might label meritocracy occurs, it cannot excuse loyalty to the nineteenth century ideal signified by the abolition of slavery. We do not want to make a mockery of the rally cry of the 1960's "we shall overcome" as the twenty first century approaches. For only when this hope is realized may the jurisdiction of the federal courts truly be relinquished.

These words should serve to illuminate the road map that the district court must create to remedy the violation of the equal protection clause in this case. They give hope that any sortie on remand will not be long or bitterly fought. We have held that *Brown* and *Green* place an affirmative duty on the state to eliminate all of the vestiges of segregation, root and branch, in the public university forum. Neither this duty nor the command of Title VI has been met. We thus reverse and remand for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED

DUHÉ, Circuit Judge, Dissenting:

Despite the well-crafted reasoning and artful prose employed by the majority, I find myself in basic disagreement.

In my view, our decision is controlled by the clear teaching of the Supreme Court in *Bazemore v. Friday*, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986), and *Alabama State Teachers' Association v. Alabama Public School and College Authority*, 289 F.Supp. 784 (M.D.Ala.1968), *aff'd*

per curiam, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). These cases teach that, where attendance choices are voluntarily made, our Constitution requires that a state discontinue prior discriminatory practices and adopt wholly race-neutral criteria for making the decisions necessary to administer and operate the system. The majority, relying on district and other circuit court decisions, has categorically rejected that teaching and imposed upon the state the same constitutional duty required for primary and secondary education where freedom of choice is unavailable and services are free of charge. In so doing it takes a liberty that is simply not available to courts of appeals.

The majority has ably distilled the essence of *Brown I* and *II*, concluding that "[C]onstitutional doctrine must commandeer a social mission to eradicate the stigma conveyed through racial separation by law." At 749. Yet if the social mission itself is not at issue in this case, the reach of that mission most certainly is. Under current law the mission to eliminate all vestiges of de jure discrimination "root and branch" does not reach the university. If it is contrary to *Brown* to assume that black students possess the same freedom to choose as white students, as the majority states, a court of appeals is not thereby entitled to circumvent a contrary decision of the Supreme Court which flatly and squarely relies on a student's freedom to choose. Moreover, the majority seeks to extend *Green* on the very basis—freedom to choose—that the *Bazemore* Court declined to extend it. *Bazemore* simply cannot be distinguished on the basis that the record in this case is "replete with the disease [of discrimination]," such analysis merely puts the evidence ahead of the standard.

Until the Supreme Court teaches otherwise we are bound by its existing pronouncements. The reasons why the rule of *Bazemore* and *Alabama* is appropriate in the higher education setting where one has freedom of choice and must bear the cost of that choice are fully explored in those opinions so are not repeated here. I fully subscribe to those reasons. I respectfully dissent.

Gregory Scott CLANTON, etc.,
Plaintiff-Appellant,

v.

HARRIS COUNTY, TEXAS,
Defendant-Appellee.

No. 89-2232.

United States Court of Appeals,
Fifth Circuit.

Feb. 6, 1990.

Former criminal defendant brought § 1983 action against county, based on state district judge's alleged failure to appoint counsel to represent defendant in timely fashion. The United States District Court for the Southern District of Texas, James DeAnda, Chief Judge, entered order dismissing claim, and appeal was taken. The Court of Appeals held that claimed omission on part of state district judge, in allegedly failing to appoint counsel to defend indigent defendant in timely fashion, was omission in his capacity as agent for state and would not support § 1983 claim against county.

Affirmed.

Civil Rights ⇐134

Claimed omission on part of state district judge, in allegedly failing to appoint counsel to defend indigent defendant in timely fashion, was omission in his capacity as agent of state and would not support § 1983 claim against county. 42 U.S.C.A. § 1983.

James T. Oitzinger, Gerald M. Birnberg, Houston, Tex., for plaintiff-appellant.

14. Accordingly, we AFFIRM all of Fortenberry's convictions in all respects.

Jake AYERS, Sr., et al., Plaintiffs,

Jake Ayers, Jr., Bennie G. Thompson, Leola Blackmon, Lillie Blackmon, Louis Armstrong, Darryl C. Thomas, and Leon Johnson, Plaintiffs-Appellants,

and

United States of America, Intervenor-Appellant,

v.

William ALLAIN, Governor, State of Mississippi, et al., Defendants-Appellees.

No. 88-4103.

United States Court of Appeals, Fifth Circuit.

Sept. 28, 1990.

Black citizens brought action alleging discrimination in state university system. The United States District Court for the Northern District of Mississippi, Neal B. Biggers, Jr., J., 674 F.Supp. 1523, found that state officials had met their duty of desegregation, and plaintiffs appealed. The Court of Appeals, 893 F.2d 732, reversed. On rehearing en banc, the Court of Appeals, Duhé, Circuit Judge, held that: (1) so long as all the state universities are open to all citizens regardless of race, fact that certain institutions formerly segregated by law continue to provide more limited range of educational options than other institutions in the state does not deny equal protection to the plaintiffs; (2) it was the right of the citizens and not of the institutions which was at issue; (3) state universities cannot assert equal protection rights in the manner of an individual; and (4) evidence sustained trial court's findings that racial composition of faculty, use of college test scores, and disparities between historically black and historically white institutions did not show intentional discrimination.

Affirmed.

Goldberg, Circuit Judge, dissented and filed an opinion in which Politz, King and Johnson, Circuit Judges, joined.

Patrick E. Higginbotham, Circuit Judge, filed opinion concurring in part and dissenting in part, in which Politz and King, Circuit Judges, joined as to dissent portion.

1. Civil Rights ⇐267

Entire range of remedial options available for desegregation of public primary and secondary schools is not available in context of higher education, simply because attendance at university is voluntary and persons may choose which of several universities to attend.

2. Civil Rights ⇐127

To fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, state satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.

3. Civil Rights ⇐127

It was the rights of citizens, not of formerly black or formerly white institutions of higher learning, which were at issue in suit alleging segregation in the higher education system, and it was from the standpoint of individual rights, not institutional parity, that practices of the state were to be reviewed.

4. Constitutional Law ⇐210(1)

State universities cannot assert equal protection rights in the manner of an individual. U.S.C.A. Const.Amend. 14.

5. Civil Rights ⇐267

Request that universities within state university system be redesignated so as to enlarge the scope of education at historical-

ly black institutions was an improper request to allot an equal protection remedy to those institutions in the manner of an individual. U.S.C.A. Const.Amend. 14.

6. Constitutional Law ⇐220(4)

If black citizens in the state may choose among any of state universities, it is no denial of their right to equal protection that certain institutions which were formerly segregated by law continue to provide a more limited range of educational options than other institutions in the state. U.S.C.A. Const.Amend. 14.

7. Civil Rights ⇐242(2)

Evidence supported finding that designations of state universities as comprehensive, regional, or urban were educationally sound and not motivated by discriminatory intent.

8. Civil Rights ⇐242(2)

Evidence sustained determination that board of trustees of state university system was not motivated by discriminatory intent in imposing admissions test requirements on applicants to state universities but, rather, was motivated by the problem of underpreparation of incoming students.

9. Civil Rights ⇐127

Failure of board of trustees to use high school grades as admission component for state universities did not show intentional discrimination.

10. Civil Rights ⇐127

Racial composition of faculty and staff at state universities did not show discrimination; from 1977 through 1986, percentage of black faculty hired at each of the five previously predominantly white universities significantly exceeded the black representation in the qualified labor pool and there was evidence of the difficulty which the state universities had in hiring qualified black faculty because of competition with universities in other states where salaries were higher.

11. Civil Rights ⇐127
Constitutional Law ⇐220(4)

Fact that inequalities between various state higher educational institutions largely followed their mission designations and those mission designations to some degree followed the historical racial assignments for those universities did not show that black citizens were denied equal educational opportunity or equal protection of the law, where state had adopted good-faith, race-neutral policies and procedures and had fulfilled its duty to open all universities to all citizens regardless of race. U.S.C.A. Const.Amend. 14.

Robert Pressman, Center of Law & Educ., Cambridge, Mass., Alvin O. Chambliss, Jr., Oxford, Miss., for plaintiffs.

Nathaniel Douglas, John R. Moore, Levern M. Younger, Franz R. Marshall, Zita Johnson-Betts, Attys., U.S. Dept. of Justice, Civ. Rights Div., Educ. Opportunities Litigation Section, Linda F. Thome, Jessica Dunsay Silver, Attys., Appellate Section, Civ. Rights Div., Dept. of Justice, Roger Clegg, Deputy Asst. Atty. Gen., Washington, D.C., for U.S.

Mike Moore, Atty. Gen., William F. Goodman, Jr., Paul Stephenson, Ed Davis Noble, Jr., Jackson, Miss., for defendants-appellees.

Appeals from the United States District Court for the Northern District of Mississippi.

Before GOLDBERG, GEE, POLITZ, KING, JOHNSON, GARWOOD, JOLLY, HIGGINBOTHAM, DAVIS, JONES, SMITH, DUHÉ, WIENER and BARKSDALE, Circuit Judges.[1]

DUHÉ, Circuit Judge:

This is an appeal from the dismissal of a lawsuit challenging the racial identity of institutions of public higher education in the State of Mississippi. *Ayers v. Allain*, 674 F.Supp. 1523 (N.D.Miss.1987) (*Ayers*

1. Chief Judge Clark is recused.
When this case was orally argued before and considered by the court, Judge Reavley was in active service. He participated in both the oral argument and the en banc conference. He took senior status, however, on August 1, 1990.

I). A panel of this Court reversed and remanded, *Ayers v. Allain*, 893 F.2d 732 (5th Cir.1990) (*Ayers II*), and rehearing en banc was granted, *Ayers v. Allain*, 898 F.2d 1014 (5th Cir.1990). Finding that the record makes clear that Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that all students have real freedom of choice to attend the college or university they wish, we affirm.

A. *History*

A detailed outline of the prior history of this case may be found in the opinions of the district court and the panel majority.[2] This is a class action filed in 1975 by black citizens of Mississippi against the Governor of Mississippi, the Board of Trustees of State Institutions of Higher Learning and its members, five historically white institutions of higher learning and their chief administrative officers, the State Department of Education, and the State Superintendent of Education.[3] The plaintiffs alleged that the defendants were maintaining and perpetuating a racially dual system of higher education in violation of the Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1981, 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The United States intervened as plaintiff under 42 U.S.C. § 2000h–2 and alleged violations of the Fourteenth Amendment and Title VI. The plaintiffs sought injunctive relief requiring the defendants to conform Mississippi's system of higher education to the constitutional and statutory mandates. The lawsuit remained under the supervision of a three-judge court for ten years and was transferred to the district court for the Northern District of Mississippi in 1985.

The district judge ordered the case tried to the court. The plaintiffs directed their complaint to the following components of higher education in Mississippi: student admissions standards and enrollment, university staff composition, institutional mission, provision and maintenance of facilities, allocation of financial resources, curricular offerings and placement of programs, operation of branch programs, allocation of land grant functions, and the composition of the Board of Trustees and its staff. The plaintiffs alleged that the vestiges of a dual, racially discriminatory system of higher education persisted in each of the components. They identified the institutions of higher learning in Mississippi as either historically black institutions or historically white institutions[4] as follows:

Historically Black Institutions
Alcorn State University
Jackson State University
Mississippi Valley State University

Historically White Institutions
Delta State University
Mississippi State University
Mississippi University for Women
University of Mississippi
University of Southern Mississippi

The defendants alleged that the Board and each institution maintained good-faith, nondiscriminatory and nonracial admissions and operational policies with respect to students, faculty, and staff, and that the state's duty to disestablish state-imposed segregation extended no further. The defendants also alleged that any racial identifiability of the institutions could not be attributed to state policies.

2. *Ayers I*, 674 F.Supp. at 1524–26, 1528–30; *Ayers II*, 893 F.2d at 733, 743–44.

3. The plaintiff class was certified in 1975 as: [a]ll black citizens residing in Mississippi, whether students, former students, parents, employees, or taxpayers, who have been, are, or will be discriminated against on account of race in receiving equal educational opportunity and/or equal employment opportunity in the universities operated by said Board of Trustees.
Ayers I, 674 F.Supp. at 1526.

4. At the time the Supreme Court rendered its decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), these institutions were designated for the education of black or white citizens, respectively.

The district judge conducted a five-week trial and issued detailed and well reasoned findings of fact and conclusions of law. *Ayers I*, 674 F.Supp. at 1526–63. He stated that the law clearly imposed upon Mississippi an affirmative duty to dismantle its racially dual system of education, but that the scope of the duty was not so broad in the context of higher education as in primary and secondary education. He held that Mississippi was not required to achieve a certain level of racial balance in the various components of higher education, but rather was only obliged to adopt and implement good-faith, race-neutral policies and procedures. He relied upon the reasoning of *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 289 F.Supp. 784 (M.D.Ala.1968) (three-judge court), *aff'd*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969) and *Bazemore v. Friday*, 478 U.S. 385, 407–09, 106 S.Ct. 3000, 3012–13, 92 L.Ed.2d 315 (1986) (White, J., concurring), in which rules governing primary and secondary education were distinguished on the basis of a state's inability to designate college attendance zones and the broader choices available to students in the context of higher education. *Ayers I*, 674 F.Supp. at 1551–54. The judge's findings and conclusions accorded with this construction of the law, and the plaintiffs have challenged some of those findings and conclusions on appeal. A summary of the district court's challenged findings and conclusions follows:

The Board of Trustees. The Board of Trustees is charged with the management and control of the institutions of higher learning in Mississippi and consists of thirteen members appointed by the governor. No black was appointed to the Board until 1972, but since 1972 three additional blacks have been appointed and three blacks currently serve. With respect to the Board staff, of the twenty-three persons responsible for overseeing the day-to-day operations of the Board, six are black, and of the fifty staff members responsible for overseeing the guaranteed student loan program, seventeen are black. The district court concluded that the Board had adopted racially neutral hiring policies with respect to its staff. *Id.* at 1550, 1563.

Use of ACT scores in student admissions. Shortly after James H. Meredith applied for admission to the University of Mississippi, the Board adopted certain policies to govern admissions to institutions of higher education in Mississippi.[5] Among these policies was the requirement that all students applying for admission take a test prepared by the American College Testing Program (ACT). The ACT requirement continues to this day. In the mid–1970's the historically black institutions did not require a minimum ACT score for admission, while the historically white schools generally required a minimum score of 15 but also provided qualified admission of students with lower scores. In the latter half of the 1970's the Board sought to address concerns about the underpreparation of incoming students, and beginning in 1977 the Board instituted a new policy declining the admission of any student who did not achieve an ACT score of 9. The Board did not adopt high school grades as an admissions component. During subsequent years the Board granted permission to certain historically white institutions to admit on a probationary or exceptional basis students with scores of less than 15. The Board also granted permission to certain historically black institutions to raise the minimum ACT score while preserving the right to admit on an exceptional basis students who fell below the minimum. *Id.* at 1530–34. The current admissions practices are:

(1) All incoming students are required to take the secondary school "core curriculum". In grades 9 through 12 students are required to have earned a certain number of units in English, mathematics, science, social science, and an elective course. A particular grade point average is not required. Exemptions from the core curriculum requirement are possible, and the exemption policies are more liberal for admission to the historically black institutions.

5. *See Meredith v. Fair*, 305 F.2d 343, 353 (5th Cir.1962).

(2) All Mississippi applicants under 21 are required to take the ACT, and no student who scores below 9 is eligible for admission as a first-time freshman.[6] Within these guidelines the individual institutions maintain different admissions standards. The Board requires a minimum score of 15 for automatic admission to the historically white institutions, although it permits enrollment of up to fifty talented or high-risk students (students presenting a high risk of academic failure) per year per institution with scores below 15. Automatic admission to Mississippi University for Women requires a score of 18, although students with lower scores can be admitted either on an exceptional basis or by achieving a certain grade point average. Automatic admission to Jackson State University, Alcorn State University, and Mississippi Valley State University requires a score of 13, with enrollment permitted for students with lower scores who, for example, are identified as high-risk or talented or who achieve a certain grade point average.

On average the ACT scores of Mississippi black students are lower than those of Mississippi white students. However, according to the Deputy Superintendent of Education, ACT scores rise measurably as more students choose to take the core curriculum and a smaller percentage of blacks choose to take that curriculum. Very few black applicants, if any, are denied admission to Mississippi universities as first-time freshman for failure to achieve the minimum ACT score. *Id.* at 1535–36.

(3) Mississippi has numerous public junior colleges which permit automatic enrollment to high school graduates. Students who fail to achieve either the required ACT score or who have not satisfied the core curriculum requirement are permitted to transfer from the junior colleges to the public universities after the completion of 24 hours with a C average. Some students with low ACT scores are permitted to transfer with as few as 15 hours. Because of the transfer policy, no applicant is denied admission for failure to achieve a particular ACT score, but admission at most is deferred.

The trial judge concluded that the current admissions policies and procedures, including the use of the ACT, were not adopted for a racially discriminatory purpose and are reasonable, educationally sound, and racially neutral. Nearly all black students who applied to historically white universities in the fall of 1986 were accepted. However, the ACT requirement was initially adopted because of its adverse effects on blacks, but admissions policies have changed in the ensuing 25 years. In particular, he concluded that the minimum ACT score of 9 was not adopted in 1976 for discriminatory purposes, but in order to address the problem of underpreparation of incoming freshman. In addition, the district court found adequate justification for the Board's decision not to adopt high school grades as a component of the admissions requirements; grade inflation and the lack of comparability among Mississippi's high schools justified the Board's policy. *Id.* at 1554–57.

Off-campus centers. The plaintiffs alleged that three off-campus centers competed for students with certain historically black institutions:

(1) In 1966 three extension centers were consolidated to form the Mississippi University Center, located in Jackson near Jackson State University. In 1972 the Board assigned management responsibilities to the University of Mississippi, Mississippi State University, and Jackson State University, and gave the center degree-granting status.

(2) In 1962 the Board granted the University of Southern Mississippi permission to establish a resident center in Natchez, near Alcorn State University. The Plan of Compliance adopted by the Board in 1974[7] called for the joint participation of the two universities at the Natchez Center, and presently the University of Southern Mis-

6. The judge found that students who receive a score of 9 on the English and social studies tests are reading at a ninth-grade level.

7. *See Ayers I*, 674 F.Supp. at 1530; *Ayers II*, 893 F.2d at 737–38.

sissippi offers only noncredit extension courses at the center.

(3) In 1952 the Board recognized a resident center at Vicksburg, and in 1980 approved a consortium arrangement between Alcorn State University and Mississippi State University for activities at the center. *Id.* at 1541–43.

Institutional mission. In 1981 the Board issued a document entitled "Mission Statements." Under the statements the public universities were classified as either "comprehensive," "urban," or "regional."

Comprehensive	Regional
Mississippi State University	Alcorn State University
University of Mississippi	Delta State University
University of Southern Mississippi	Mississippi University for Women
	Mississippi Valley State University

Urban
Jackson State University

The "comprehensive" designation implies a greater number and higher level of degree offerings, the "urban" designation oriented the institution toward service to the urban community, and "regional" signifies course offerings generally limited to undergraduate instruction. One witness testified that every state but one assigns missions to its universities. Such assignments are required by limited financial resources. *Id.* at 1538–40.

The judge concluded that the 1981 mission designations were not motivated by a discriminatory purpose but rather a need to conserve scarce educational resources. The state was under no duty to use the designations as a device to maximize racial integration. The designations were rationally based on sound educational policies. *Id.* at 1560–61.

Disparities in funding and programs. Differences exist among the institutions with respect to the relative quality and quantity of programs offered, library volumes, and number of faculty with doctorates and degrees from major research institutions. However, these differences do not correlate with historical racial configuration, but rather with the comprehensive or noncomprehensive designation of a given institution. In particular, no racial pattern exists in program quality among noncomprehensive institutions. *Id.* at 1541.

The plaintiffs alleged that disparities existed in land grant activities between Mississippi's two land grant universities, Alcorn State University and Mississippi State University. Financial allocations for agricultural instruction at the two universities are educationally sound, reasonable, and unaffected by racial considerations. Agricultural research is heavily concentrated at Mississippi State University, which conducts research through the Mississippi Agricultural and Forestry Experimental Station. Since 1972, however, Alcorn State University has conducted a branch experimental station and since 1971 has received limited legislative appropriations for agricultural research. The judge also found that the Mississippi Cooperative Extension Service, an off-campus, separately funded arm of Mississippi State University, operates a branch at Alcorn State University. He concluded that funds for land grant instruction were allocated according to a racially neutral funding formula, and that disparities in land grant programs were not caused by any discriminatory motive. *Id.* at 1543–46.

With respect to funding, the Board allocates a general support appropriation among the universities according to a funding formula. The formula attempts to calculate costs of instruction, the percentage of total need which the costs of instruction represent, and the funds each institution is expected to generate for itself. Institutional mission is an important element in calculating instruction costs, total need, and expected self-generated funds.[8] The funding

8. Average cost estimates are based on an aggregation of the institutions into three groups.

formula does not treat the predominantly black institutions inequitably. Mississippi Valley State University benefitted substantially from being grouped with the other regional universities for purposes of calculating instruction costs, and Jackson State University also benefitted from being grouped with the University of Southern Mississippi. On those occasions when the Board departed from the formula, the predominantly black institutions have benefitted. The district court concluded that differences in funding levels are not attributable to race but to legitimate educational distinctions among the institutions. *Id.* at 1546–48, 1562.

With respect to facilities, from 1970 to 1986 the predominantly black institutions received a greater percentage share of appropriations for new construction than the percentage of system-wide enrollment those institutions represented. In comparing the amount of functional space available per full-time equivalent student,[9] the predominantly black schools rank second, third, and seventh among the eight universities. The district court found no correlation between the racial identity of the institutions and the quality of the facilities, and concluded that the distribution of funds for capital improvements clearly evinced a good-faith affirmative effort to provide adequate facilities at the historically black institutions. *Id.* at 1548–50, 1562.

B. *The Duty of the State*

It is necessary first to determine the scope of Mississippi's duty to remedy the effects of past de jure discrimination. There is no dispute that, when the Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (*Brown I*), Mississippi operated a racially dual system of public higher education. *See Meredith v. Fair*, 305 F.2d 343, 350 n. 7 (5th Cir.1962); *Ayers I*, 674 F.Supp. at 1528–30. Mississippi was therefore constitutionally required to eliminate invidious racial distinctions and dismantle its dual system. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18, 22, 91 S.Ct. 1267, 1277, 1279, 28 L.Ed.2d 554 (1971); *Brown v. Board of Education*, 349 U.S. 294, 300–01, 75 S.Ct. 753, 756–57, 99 L.Ed. 1083 (1955) (*Brown II*). The precise constitutional obligation of a state with respect to its system of higher education, however, is not so clearly defined as in cases involving primary and secondary education. In the latter cases school authorities have been charged to eliminate all vestiges of state-imposed segregation, *Milliken v. Bradley*, 433 U.S. 267, 289–90, 97 S.Ct. 2749, 2761–62, 53 L.Ed.2d 745 (1977); *Swann*, 402 U.S. at 15, 91 S.Ct. at 1275–76, and "to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," *Green v. County School Bd.*, 391 U.S. 430, 437–38, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716 (1968). In two cases outside the context of primary and secondary education, a different standard has been employed. *See Bazemore v. Friday*, 478 U.S. 385, 408, 106 S.Ct. 3000, 3012–13, 92 L.Ed.2d 315 (1986) (White, J., concurring);[10] *Alabama State Teacher Ass'n v. Alabama Public School and College Auth.*, 289 F.Supp. 784 (M.D. Ala.1968), *aff'd per curiam*, 393 U.S. 400, 89 S.Ct. 681, 21 L.Ed.2d 631 (1969). In these cases the governing authorities were deemed to have satisfied their constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies.

These groups correspond to the mission designation of the respective universities, except that the University of Southern Mississippi is included with Jackson State University for purposes of establishing an average for the urban group.

9. Dr. Larry Leslie, Professor and Director of Higher Education at the University of Arizona, testified that the calculation "per full-time equivalent student" was generally performed by adding one-third of the part-time enrollment to the number of students classified as full time. The calculation may also be performed by adding the full-time enrollment to an aggregate of credit hours earned by part-time students divided by the appropriate dividend to reflect full-time equivalence.

10. Justice White's concurring opinion was incorporated into the *per curiam* opinion of the Court. *See Bazemore*, 478 U.S. at 387, 106 S.Ct. at 3002.

Bazemore, 478 U.S. at 408, 106 S.Ct. at 3012–13; *Alabama State Teachers*, 289 F.Supp. at 789–90. This Court must therefore determine whether Mississippi's duty to dismantle its prior system of de jure segregation in higher education requires more than the adoption and implementation of good-faith, race-neutral policies and procedures in the components of higher education under review.

We first note that the issues in this lawsuit bear on the defendants' fulfillment of their duty under the Constitution and relevant laws. Neither this Court nor the district court addresses the specific remedies which the defendants must or might undertake in the future. Nevertheless, because the duty outlined in *Bazemore* is essentially a remedial duty and describes, in a general manner, the scope of mandatory remedial action, it is occasionally necessary to refer to specific remedies for the sake of illustration.

In *Green* the Supreme Court expressed its distrust of ostensibly race-neutral policies in primary and secondary school desegregation plans. The Court determined that a school board's adoption of a plan under which students were annually permitted to choose to attend one of the two schools in the county "fail[ed] to provide meaningful assurance of prompt and effective disestablishment of a dual system...." *Green*, 391 U.S. at 438, 88 S.Ct. at 1694. The Court noted that in the three years prior to its decision no white child had chosen to attend the all-black school and that 85% of the black children continued to attend that school. The Court concluded:

> We do not hold that "freedom of choice" can have no place in [a desegregation plan]. * * * Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself. * * * Although the general experience under "freedom of choice" to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, non-racial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, "freedom of choice" must be held unacceptable.

Id. at 440–41, 88 S.Ct. at 1695–96 (footnotes omitted). The Court therefore dismissed the "freedom of choice" plan before it as ineffective while recognizing that in other circumstances choice could serve as an effective device, particularly when other methods of achieving desegregation are not available.

The role of choice in higher education under current law can be discovered only somewhat more obliquely from the few cases that have addressed the issue. In *Alabama State Teachers* a black teachers' association sued a state body that governed public education in Alabama, seeking to enjoin the construction of a four-year college at Montgomery. The plaintiffs argued that in planning the new college the defendant did not "maximize desegregation." The court held that although a state has an affirmative duty to dismantle a racially dual system of higher education, the scope of the duty did not extend so far in higher education as in primary and secondary education. The court believed the state's duty was satisfied by dealing with admissions, faculty, and staff in good faith. 289 F.Supp. at 789–90.

> Higher education is neither free nor compulsory. Students choose which, if any, institution they will attend. In making that choice they face the full range of diversity in goals, facilities, equipment, course offerings, teacher training and salaries, and living arrangements, perhaps only to mention a few. From where legislators sit, of course, the system must be viewed on a statewide basis. In deciding to open a new institution or build a branch or expand an existing institution, and in deciding where to locate it, the legislature must consider a

> very complicated pattern of demand for and availability of the above-listed variables, including, also, impact on the dual system. We conclude that in reviewing such a decision to determine whether it maximized desegregation we would necessarily be involved, consciously or by default, in a wide range of educational policy decisions in which courts should not become involved.

Id. at 788. The court recognized that *Green* had cast doubt on the viability of "freedom of choice" plans in primary and secondary schools. The court believed, however, that *Green* did not dictate the same result for higher education, because freedom to choose a college, unlike freedom to choose a primary or secondary school, helps to perform the important function of fitting a student to the right school. *Id.* at 790.

A few years later another three-judge court reached the opposite result. *Norris v. State Council of Higher Education for Virginia*, 327 F.Supp. 1368 (E.D.Va.), *aff'd*, 404 U.S. 907, 92 S.Ct. 227, 30 L.Ed.2d 180 (1971). Black faculty and students at Virginia State College sought to enjoin the expansion of a predominantly white college from a two-year to a four-year institution. The lawsuit challenged the constitutionality of an appropriation act providing for the expansion, an act which it was alleged perpetuated a racially dual system of higher education. The court concluded that the purpose and effect of the expansion was to provide a four-year college for white students, that the appropriation act served to perpetuate a racially dual system of higher education, and that the act therefore violated the Fourteenth Amendment. *Id.* at 1370–71. The court noted that while *Green* addressed desegregation in public primary and secondary schools, "it defined a constitutional duty owed as well to college students." *Id.* at 1373. The court believed only the means of eliminating discrimination in the two contexts differed. *Id.*

Alabama State Teachers and *Norris* announced opposite conclusions on the issue of *Green*'s applicability to higher education, and both decisions were affirmed on appeal to the Supreme Court. The awkwardness is explained by the underlying facts and conclusions in the two opinions. The disposition in *Alabama State Teachers* is entirely dependent on the conclusion that *Green*'s rejection of certain "freedom of choice" plans in primary and secondary schools does not dictate the same result in the college setting. It is therefore doubtful the Supreme Court could have upheld the denial of the injunction without giving sanction to the standard announced by the trial court. This is particularly so in view of the fact that the Supreme Court had the benefit of Justice Douglas' dissent, in which he points out squarely that the trial court had drawn a distinction between levels of education which had not been drawn in prior decisions. *Alabama State Teachers Ass'n v. Alabama Public School and College Auth.*, 393 U.S. 400, 401, 89 S.Ct. 681, 682, 21 L.Ed.2d 631 (1969) (Douglas, J., dissenting); *see Norris*, 327 F.Supp. at 1378 n. 8 (Hoffman, J., dissenting in part). In *Norris*, on the other hand, the granting of the injunction was based on a finding which warranted the injunction regardless of the standard employed. The lower court found that "the *purpose* and effect of [the college's] escalation is to provide a four-year college for white students who reside nearby." *Norris*, 327 F.Supp. at 1371. This finding put the defendants in clear violation of their duty to eliminate invidious racial distinctions. The decision was therefore properly affirmed on appeal, and the lower court's attempts to distinguish *Alabama State Teachers* and adopt *Green* were in no way essential to the resolution of the case.

In *Bazemore* the Supreme Court further clarified the duty of a state outside the context of primary and secondary education. The School of Agriculture and Life Sciences at North Carolina State University operated an extension service that educated farmers in agriculture, organized and operated clubs in home economics and 4–H, and conducted citizens' organizations for community resource development. The extension service had formerly maintained racially segregated branches, but the branches were merged in 1965. Employees, ser-

vices recipients, club members, and parents sued the president and other officials of the university alleging racial discrimination in employment and services related to the extension service. The record indicated generally that the 4-H and homemaker clubs remained clearly racially identifiable. The district court nevertheless found no evidence of any discrimination after the merger of the two branches and the opening of the clubs to all eligible persons regardless of race, and the adoption of race neutral policies regarding staff.

The Supreme Court held that the case presented no current violation of the Fourteenth Amendment, because the extension service had discontinued its prior discriminatory practices and had adopted a wholly neutral admissions policy. *Bazemore*, 478 U.S. at 408, 106 S.Ct. at 3012-13. The Court gave particular attention to the choices available to those who sought to join the clubs, noting that the choice of a club was entirely voluntary, a person was not compelled to join a club, and no one had the authority to deny a person the right to join a club he or she wished to join. *Id.* The Court noted that while *Green* required greater measures in desegregating primary and secondary schools, it did not govern the voluntary associations operated by the extension service. "[H]owever sound *Green* may have been in the context of the public schools, it has no application to this wholly different milieu." *Id.*

It might appear that *Bazemore* is at odds with *Green*, because *Bazemore* approved a desegregation plan substantially similar to the plan rejected in *Green*. The two decisions do not support such exclusive readings, however. *Green* did not invalidate all "freedom of choice" plans, but rather concluded that such a plan alone in the case before the Court did not effectively meet the state's obligation to desegregate its primary and secondary schools. The Court repeatedly emphasized that there was no universal answer, no one plan, that would achieve the goal of desegregation in every case, and that the availability of alternative methods would bear on the effectiveness of a given plan. "[I]n desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself.... '[I]t is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.'" *Green*, 391 U.S. at 440, 88 S.Ct. at 1695 (quoting *Bowman v. County School Board*, 382 F.2d 326, 333 (4th Cir.1967) (Sobeloff, J., concurring)). *Bazemore* is therefore not at odds with *Green*. *Bazemore* simply provides an instance, anticipated by *Green*, of freedom of choice proving itself in operation.

While the two decisions are not at odds, a court presented with a freedom-of-choice plan must nevertheless determine whether the plan must be rejected under *Green* or may be approved under *Bazemore*. A decision of the Sixth Circuit illustrates the difficulty in drawing the line. *See Geier v. Alexander*, 801 F.2d 799 (6th Cir.1986). Tennessee had formerly maintained a racially segregated university system, and several individuals sued the state to prevent the construction of a non-degree granting center close to a predominantly black university. The scope of the lawsuit expanded to include desegregation of the public universities generally, and after many years of litigation the parties agreed to a consent decree. The United States objected to a provision of the decree which required the defendants to select 75 black students yearly for entry into professional programs. The United States argued, among other things, that the provision violated the equal protection rights of non-minority students, because under *Bazemore* a state has no obligation to remove the vestiges of prior discrimination in higher education but need only establish neutral admissions standards.

The Sixth Circuit held that the district court was entitled to impose affirmative remedies to remove the vestiges of prior discrimination and that the provision at issue contained a permissible remedy. The court believed that *Green*, not *Bazemore*, governed the issue of desegregation in public universities, and that the United States had "read[ ] too much into *Bazemore*."

The court stated that while no one is compelled to enter a profession, if he wishes to do so he must pursue the appropriate course of study at a university. The court also stated that an advanced education is more valuable than the services provided by the 4–H and homemaker clubs under review in *Bazemore*, and that the state's interest in educating its young people therefore required the application of *Green*. *Id.* at 804–05.

We disagree with both the holding and reasoning in *Geier*. The *Geier* court applied the *Green* standard after distinguishing *Bazemore*, a case which in turn had distinguished *Green*. We believe the Sixth Circuit incorrectly performed this awkward legal arithmetic. *Bazemore* relies entirely on the choices available to persons who wished to join the clubs under review. The *Bazemore* opinion does not address the character of the programs or the importance of the clubs to the communities they serve, nor does it make any distinction between supplementary education and the conferral of degrees. It states only that the choices available to potential club members serve to distinguish the clubs from primary and secondary schools. It therefore makes little sense why other factors, which formed no part of the reasoning, should serve to distinguish the decision and consequently require a university to submit to the *Green* standard.

If *Bazemore* had not relied on choice alone it would nevertheless be difficult to make the kind of distinctions that the *Geier* court made among the different offerings of a public university. If the law demanded a different obligation of the state with respect to different university offerings, a university could never be judged as a whole. One portion of a given lawsuit directed at "*Bazemore*-type" programs would be resolved by different standards and call for different remedies than another portion directed at "*Green*-type" programs. Distinctions would be made between and among continuing education, professional curricula, research fellowships, athletics, and the like. Such distinctions would be based on the doubtful premise that a state has a different constitutional obligation with respect to separate university offerings.

It would be even more difficult to determine on what bases these different obligations could be allotted, and in this regard *Geier* is particularly unsatisfactory. The notion that a person must pursue the appropriate course of university study in order to enter a profession does not mean that a person has no choice but to enter a university, and does not equate an aspiring professional to a student at a primary or secondary school. The comparison to primary and secondary schools is valid only if the state somehow has a compelling interest in assuring that persons enter professions. The court's statement that membership in an extension service is valuable but cannot be compared to the importance of education ignores the fact that the 4–H and home economics divisions of the extension service in *Bazemore* were engaged in the education of their club members. *See Bazemore*, 478 U.S. at 389, 106 S.Ct. at 3003 (Brennan, J., concurring), 410 (Brennan, J., dissenting in part). The root problem with the *Geier* court's reasoning was correctly identified by the panel majority in the present case as an improper "hierarchy of values." *Ayers II*, 893 F.2d at 745. Such a hierarchy is purely subjective, impossible to apply, and not founded on the Constitution.

[1] We believe that *Bazemore* and *Alabama State Teachers* provide the proper standard to govern Mississippi's efforts to disestablish prior de jure segregation in its universities. Universities are not simply institutions for advanced education. They differ in character fundamentally from primary and secondary schools, and the duty outlined in *Green* cannot bring about the disestablishment of prior de jure segregation in higher education except at the expense of the very goals *Green* sought to achieve. The most obvious differences concern attendance and the choice of institution. An entire range of remedial options available for the desegregation of the public primary and secondary schools is not available in the context of higher education simply because attendance at a university

is voluntary and persons may choose which of several universities to attend. This is not merely a problem of discovering the appropriate "means" of eliminating discrimination as the *Norris* court stated. *Norris*, 327 F.Supp. at 1373. *Green* acknowledged that the viability of a "freedom of choice" plan would be dependent in part on the number of effective remedial alternatives. *Green*, 391 U.S. at 439–41, 88 S.Ct. at 1694–96. The Court twice mentions zoning as such an alternative. *Id.* at 441, 442, 88 S.Ct. at 1696. It hardly needs mention that remedies common to public school desegregation, such as pupil assignments, busing, attendance quotas, and zoning, are unavailable when persons may freely choose whether to pursue an advanced education and, when the choice is made, which of several universities to attend.

A second difference concerns the uniformity of primary and secondary education as contrasted with the diversity of a university education. *See Alabama State Teachers*, 289 F.Supp. at 788. The idea of diversity is crucial to the task of assigning the proper duty to the state of Mississippi, because diversity raises questions of choice discussed in both *Green* and *Bazemore*. The central difficulty is that *Green* would impose a regime of imperatives and uniformity on what are in essence diverse institutions, and in so doing would destroy the choices available to both black and white citizens of Mississippi. For example, consistent with *Green* the plaintiffs have asked for the merger of branch centers with nearby historically black universities, enhancement of programs at historically black universities to bring them to parity with programs at historically white universities, redesignation of the missions of the historically black universities, and the termination of certain programs so that those programs will be offered only at the historically black universities. To the extent these remedies attempt to force a potential student to attend a particular university, they reduce that student's choice among institutions. To the extent these remedies impose uniformity among the eight institutions, they render the student's choice valueless and return to the unacceptable "separate but equal" principle. The district court found that approximately 30% of all black college students attending four-year colleges in the state attend one of the comprehensive universities. *Ayers I*, 674 F.Supp. at 1562. Imposing remedies argued for by plaintiffs under *Green* would force some of those students, who presently enjoy the benefits of a comprehensive university, either to look to another institution or forgo their education. Equal protection is not served by closing doors which this country and this circuit in particular have taken great pains to open. If an aspiring student may freely choose to attend college, if he may freely choose among all institutions in the state, and if no authority exists to deny him the right to attend the institution of his choice, he is done a severe disservice by remedies which, in seeking to maximize integration, minimize diversity and vitiate his choices. *Bazemore* properly takes account of the "wholly different milieu" of a voluntary association. *Bazemore*, 478 U.S. at 408, 106 S.Ct. at 3013. Under *Bazemore* latter-day Merideths are not routed to what the government deems the appropriate institution, but may attend any institution they wish. Under *Green* as contended for by plaintiffs they may attend only the institutions that a federal judge has meticulously selected, grafted and pruned for them.

[2] We therefore hold that to fulfill its affirmative duty to disestablish its prior system of de jure segregation in higher education, the state of Mississippi satisfies its constitutional obligation by discontinuing prior discriminatory practices and adopting and implementing good-faith, race-neutral policies and procedures.[11]

11. The plaintiffs argue that the defendants are required to comply with certain regulations issued by the Office of Civil Rights of the Department of Education. *See* 34 C.F.R. § 100.3(b)(6)(i) (1989). The regulations generally require a recipient of Title VI assistance who has previously discriminated against persons on the ground of race to take affirmative action to overcome the effects of prior discrimination. Under the present record we are not

C. *The District Court Judgment*

The district court concluded that the State of Mississippi had met its affirmative duty to disestablish its former de jure segregated system of higher education. Underlying this conclusion are the numerous findings outlined above regarding Mississippi's adoption of good-faith, race-neutral policies and procedures in the several components of higher education under review. The district court properly treated Mississippi's current practices as matters of fact. *Pullman-Standard v. Swint*, 456 U.S. 273, 288–90, 102 S.Ct. 1781, 1789–91, 72 L.Ed.2d 66 (1982); *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 534 & n. 8, 99 S.Ct. 2971, 2977 & n. 8, 61 L.Ed.2d 720 (1979). We therefore review those findings for clear error. Fed.R.Civ.P. 52(a); *Pullman-Standard*, 456 U.S. at 290, 102 S.Ct. at 1791.

The plaintiffs argue that the district court should have assessed the defendants' practices under *Green*, and the plaintiffs' allegations of clear error rest in large part on the contention that the court applied the incorrect remedial duty. Consequently, with respect to many of the court's findings the plaintiffs do not argue in the usual manner that the findings are clearly erroneous, but rather that the court reviewed the facts under the wrong standard and thus drew the wrong conclusions from those facts. A large number of the court's findings are therefore themselves not in dispute and, as discussed below, when reviewed under the standards this Court has adopted, point only to institutional, not constitutional, inequities. Two components at issue, however, bear directly on the choices afforded to current and potential students at Mississippi universities. Mission designation and admissions criteria require close review, since it is chiefly through these components that Mississippi either satisfies or fails to satisfy its duty to provide true choice to its citizens.

(i)

[3–6] The plaintiffs argue that the mission designations perpetuate the inequalities of the prior dual system, because missions were assigned on the basis of the institutional resources as they existed at the time of designation. The essence of the argument is that historically black institutions remain "Black Schools" by the regional or urban designation. We recognize that for purposes of this lawsuit it is necessary to describe institutions as either historically black or historically white. But since this lawsuit examines the current practices of the state of Mississippi, the use of the terms Black School and White School, based as they are on racial identifiability alone, is misleading. In the context of mission designation these terms imply that institutions wear an urban or regional designation as an individual would wear the mark of a lower rank. What is wholly ignored by the terms Black School and White School is that the rights of citizens, not institutions, are at issue in this lawsuit, and it is from the standpoint of individual rights, not institutional parity, that Mississippi's practices must be reviewed. The law clearly does not permit state universities to assert equal protection rights in the manner of an individual. *See United States v. Alabama*, 791 F.2d 1450, 1454–57 (11th Cir.1986), *cert. denied*, 479 U.S. 1085, 107 S.Ct. 1287, 94 L.Ed.2d 144 (1987). Despite the plaintiffs' assurance that they do not make any such argument, their desire that Mississippi universities be redesignated so as to enlarge the scope of education at the historically black institutions is no less than a request to allot an equal protection remedy to those institutions in the manner of an individual. If black citizens in Mississippi may choose among any of the eight universities in the state, it is no denial of their right to equal protection that certain institutions formerly segregat-

prepared to say the defendants have failed to meet the duties outlined in the regulations. It is unnecessary, however, to discuss the scope of Mississippi's duty under the regulations. The plaintiffs in *Bazemore* challenged the extension service's governance of the 4–H and homemaker clubs under Title VI. *See Bazemore v. Friday*, 751 F.2d 662, 687 n. 128 (4th Cir.1984). There cannot be any question, therefore, that the duty outlined by the Supreme Court in *Bazemore* controls in Title VI cases.

ed by law continue to provide a more limited range of educational options than other institutions in the state.

The district judge found that the mission designations were not motivated by a discriminatory purpose but were rationally based on sound educational policies and a need to conserve scarce educational resources. *Ayers I*, 674 F.Supp. at 1561. Dr. Larry Leslie, Professor and Director of Higher Education at the University of Arizona, testified for the plaintiffs concerning the funding of the institutions. In one portion of his analysis he sought to compare the funding among the institutions within each of the mission designations. Because there were no predominantly black institutions in the comprehensive category and no predominantly white institutions in the urban category, he compared the three comprehensive schools to the one urban school. As of 1986 he found greater total revenue per student, greater state and local appropriation, greater tuition and fees collected, and somewhat greater gifts, grants, contracts, and other income at the comprehensive universities than at the urban, predominantly black, university. It is reasonable to conclude that, at least to some degree, these findings reflect the different missions of the institutions being compared. In comparing both predominantly black and predominantly white institutions within the regional category, however, Dr. Leslie described his findings as "mixed." As of 1986 Alcorn State and Mississippi University for Women received the greatest total revenue per student, with Delta State and Mississippi Valley State somewhat far behind. Alcorn State also collected more in tuition, fees, gifts, grants, contracts, and other income than any other regional university, and spent markedly more for instruction and other activities per student. Dr. Leslie's testimony as a whole indicates that the state is faithful to the mission designations and is not using them to disguise unequal treatment of those who attend predominantly black institutions.

Dr. John Millett, an academic consultant on issues in higher education and administration, testified for the defendants on the subject of mission designations. He believed that the 1981 mission statements had confirmed the existing structure of the state universities. He also stated that the United States Department of Education similarly classifies all academic institutions by purpose as either doctoral granting, comprehensive, general baccalaureate, specialized, and two-year. In his opinion Mississippi's mission designations were well-defined, educationally sound, and efficient.

Dr. Joseph Johnson, Vice President for Development at the University of Tennessee, testified for the defendants as an expert in higher education administration and finance. He stated that in a 1984–85 study comparing Mississippi's comprehensive universities (historically white) to universities of similar mission elsewhere in the South, the Mississippi institutions faired worse in funding than all other institutions. The one urban institution (historically black) and the four regional institutions (two historically black and two historically white) in Mississippi, on the other hand, stood above the average for like institutions in the South. For the academic year 1985–86 he believed that the two predominantly black universities designated as regional were much better financed than Mississippi's comprehensive institutions relative to institutions of similar mission in other states.

Dr. Thomas Meredith, an academic programs officer for the Board of Trustees, testified that the mission statements did have the effect of maintaining the status quo of program offerings at the predominantly black universities. He was asked by counsel for the United States whether the mission statements limited the level and scope of programs at those institutions, and responded as follows:

> It put boundaries around all institutions. Up until that time all institutions had been operated under the premise that they needed to do everything for everyone. We were a state of two and a half million people and dwindling resources, and the Board of Trustees felt that it needed to give each institution a direction, and boundaries as well, and utilizing all of the elements that you see

in the mission statements that the state would be covered. All of those things would be addressed that this state needed to be about and needed to have, but, yes, institutions did have boundaries. You need to concentrate your resources on certain things and quit trying to just keep on doing more. That was a problem.

[7] The record therefore supports the plaintiffs' argument that the mission designations had the effect of maintaining the more limited program scope at the historically black universities. As noted above, however, this fact alone does not deny the plaintiffs their right to equal protection. The record amply supports the findings of the district court that the designations are commonly used, educationally sound, and not motivated by discriminatory intent. Those findings are not clearly erroneous. This is not to say the mission designations adopted by Mississippi efficiently allocate the state's resources. The district judge concluded the very opposite. *Ayers I*, 674 F.Supp. at 1563–64. This Court nevertheless cannot pass on the financial wisdom of the designations. It is necessary only that black citizens enjoy full equal protection of the laws in attending their choice of institution, however financially infirm the system of higher education as a whole may be.

(*ii*)

[8] The plaintiffs challenge the policies governing admission to the eight universities on several grounds. They first argue that the ACT requirement was adopted for a discriminatory purpose and continues to have a severe discriminatory impact on black applicants. They therefore argue that the ACT policy is intentionally discriminatory and violates equal protection. In support of their argument they cite *Hunter v. Underwood*, 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985). In *Hunter* the Supreme Court struck down a provision of the Alabama Constitution adopted by convention in 1901 which disenfranchised persons convicted of crimes of moral turpitude. The Court held that because the provision was motivated by a desire to discriminate against blacks and the provision continued to have that effect, it violated equal protection. *Id.* at 233. The plaintiffs' argument ignores the fact that Mississippi's current admissions policies trace chiefly to the latter 1970's and, as the district court correctly found, the Board was not then motivated by discriminatory intent but by the problem of underpreparation of incoming students. The racial impact of the Board's 1961 blanket ACT requirement, adopted undeniably for discriminatory purposes, has been negated by the numerous qualifications and exceptions outlined earlier. The bare requirement that the test be taken no longer prevents anyone's admission to Mississippi universities. The ability of an applicant to transfer from a junior college without satisfying an ACT score requirement led the district court correctly to conclude that no applicant is denied the opportunity to attend a Mississippi university for failure to achieve a particular score. In addition, minimum score requirements were not adopted until long after the test requirement, and the fact that the minimum score requirement may have discriminatory impact does not render it unconstitutional. *Washington v. Davis*, 426 U.S. 229, 239–41, 96 S.Ct. 2040, 2047–48, 48 L.Ed.2d 597 (1976).

The plaintiffs also argue that the defendants' admissions practices are intentionally discriminatory, because the Board does not require the use of high school grades in conjunction with ACT scores. The plaintiffs note that the American College Testing Program recommends that ACT scores be used in conjunction with other criteria such as grades in order to gain as complete a profile as possible of the applicant.

[9] We find no support in the record for the assertion that the Board's failure to use grades as an admissions component points to intentional discrimination. First, while the Board itself does not require the use of high school grades, the individual institutions do use grades in identifying high-risk or exceptional students for special admission. Second, even assuming the policy is narrow, inaccurate, and educationally unsound, it does not follow that the policy

is thereby intentionally discriminatory. Third, Dr. Meredith testified that in 1976 there was concern both in Mississippi and nationally with grade inflation, that grades did not mean as much as they used to mean, and that they were not a true reflection of what an applicant had learned. He stated that primary and secondary schools varied tremendously from one part of the state to another, particularly in the sciences where, for example, a given school might offer chemistry without providing lab facilities. He also stated that the Board was advised by ACT administrators that while the use of grades with the ACT would provide a better assessment, they were satisfied with the use of the ACT alone. Dr. Meredith's testimony is supported by the fact that, as with grades generally, the Board does not require students to achieve a certain grade point average in completing the core curriculum.

The plaintiffs also argue that the district court's findings improperly focussed on reasonableness and neutrality rather than viewing the policies from the standpoint of an affirmative remedial obligation. Although we believe, as discussed above, that the duty outlined in *Green* does not apply in this case, we would be reluctant to say the defendants have not met their duty even under *Green*. The admissions policies of the various institutions are extremely flexible and address both academic preparation and the need to recognize less common measures of achievement. The comprehensive institutions maintain a very modest ACT score requirement while setting aside a portion of their enrollment for those who do not meet the objective criteria. Only a few black first-time applicants are turned away from the comprehensive universities for failure to meet the ACT score requirement. Students are required to satisfy a course of core studies in high school, but they are required only to attend, not to achieve a particular grade-point average. The district court gave full consideration to all aspects of the admissions process and found that current admissions policies and procedures in effect in Mississippi universities were adopted and developed in good faith and for nondiscriminatory purposes. These findings are not clearly erroneous.

(iii)

The plaintiffs have raised several arguments regarding racial incidents at the University of Mississippi, the racial composition of the faculty and staff, unsuccessful applicants for administrative positions at Mississippi State University, and the fact that a black has not occupied a particular seat on the Board of Trustees. While these problems may be serious, they do not provide enough of a factual basis to persuade us that the district court erred in concluding Mississippi had met its duty to dismantle its dual system.

[10] With respect to the racial composition of the faculty and staff specifically, the record indicates that from at least 1977 to 1986 the percentage of black faculty hired at each of the five predominantly white universities significantly exceeded the black representation in the qualified labor pool. Bernard Siskin, a statistician and labor analyst, testified on faculty hiring and composition, among other matters. He provided both a "snapshot" of faculty present at a given time and a study of hiring over a period of time. The current aggregate faculty composition showed black representation lower than the qualified labor pool, a result Siskin attributed to pre–1974 hires and high black turnover. At two of the institutions Siskin stated that the discrepancy between black hiring and current black representation had disappeared through post–1974 hiring and the turnover of older faculty.

Dr. Forest Wyatt, President of Delta State University, testified that the Board had communicated with his institution regarding increasing black faculty and other employment. He stated that he was instructed to increase black presence at Delta State and that the instructions were forwarded to deans, department heads, and others in employment positions at the university. He believed those individuals carried out those goals to the best of their ability. He also testified specifically re-

garding the university's successful effort to recruit a black admissions counselor to attract more black students to the university.

Dr. Victor Feisal, Vice-president for academic affairs at Memphis State University, testified concerning the difficulties in minority faculty recruitment. He stated there was a tremendous shortage of black students with graduate degrees, and extreme competition among educational institutions and the business community for their services. He also stated that financial conditions made it particularly difficult for Mississippi to attract those candidates, because Mississippi is not competitive with other states in faculty salaries and funding of higher education.

(iv)

The plaintiffs have pointed to disparities between the historically black and historically white institutions regarding program offerings and duplication among universities and branch centers, faculty, funding, library volumes, facilities, and land grant programs. The district court correctly concluded that the defendants had met or exceeded their duty to disestablish prior de jure segregation in these areas, and we have nothing to add to the district court's opinion except the following.

[11] The district court incorrectly concluded that the disparities among the institutions were not reminiscent of the former de jure segregated system. *Ayers I*, 674 F.Supp. at 1560. On the contrary, the disparities are very much reminiscent of the prior system. The inequalities among the institutions largely follow the mission designations, and the mission designations to some degree follow the historical racial assignments. But this does not mean the plaintiff class is denied equal educational opportunity or equal protection of law. The defendants have adopted good-faith, race-neutral policies and procedures and have fulfilled or exceeded their duty to open Mississippi universities to all citizens regardless of race. Their policies toward institutions are not racially motivated. Institutional differences remain, but in order to level those differences under principles of equal protection this Court would somehow have to adopt the plaintiffs' terms "Black School" and "White School" and attach legal significance to those terms. This Court therefore cannot adjust the equities in the manner the plaintiffs request unless we declare, with the force of law, that Alcorn State University, Jackson State University, and Mississippi Valley State University, shall henceforth be designated as Black Schools for black students, and shall at all times remain equal in funding, offerings and facilities with their counterparts designated as White schools. We need not cite the source for this revolting principle.

The judgment is AFFIRMED.

GOLDBERG, Circuit Judge, with whom POLITZ, KING and JOHNSON, Circuit Judges, join, dissenting:

I respectfully dissent from the well-organized and well-expressed opinion written by Judge Duhé for the en banc court. This opinion is an important one, and one would expect there to be diverse opinions, but that does not diminish the strength of my conviction that the district court judgment should be reversed. Judge Duhé has admirably expounded the en banc court's point of view, but I adhere to the panel's majority opinion. *Ayers v. Allain*, 893 F.2d 732 (5th Cir.1990).

I do not wish to trespass on the court's time in needless elaboration or repetition. The district court and our panel have already thoroughly analyzed this case. Many hours have previously been expended in its explication. The jurisprudence explored and the authorities cited in the panel's majority opinion clearly point to the conclusion that this case should be remanded to the district court. I would remand for proceedings not inconsistent with the principles and doctrines expostulated in the original panel's majority opinion.

PATRICK E. HIGGINBOTHAM, Circuit Judge, concurring * in part and dissenting in part. POLITZ and KING, Circuit Judges, join in the dissent portion of this opinion.

The district court held that the State of Mississippi has no duty to eliminate the vestiges or effects of its overt discrimination against blacks in the administration of its university system. To the contrary, the district court concluded that the state's obligation ended when it adopted an open admissions policy and stopped purposeful racial discrimination. Today, we affirm this erroneous view of Mississippi's obligation to its black residents. I dissent.

The district court has prepared a careful opinion exploring the difficulties and complexities of the university system, and the majority finds record support for the district court's factual findings. The difficulty is that the majority today deferentially affirms the district court's answer to the wrong question. That deference is undue. It is well settled that "if the trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard." *Inwood Laboratories v. Ives Laboratories*, 456 U.S. 844, 855 n. 15, 102 S.Ct. 2182, 2189 n. 15, 72 L.Ed.2d 606 (1982) (citing *United States v. Singer Manufacturing Co.*, 374 U.S. 174, 177, 83 S.Ct. 1773, 1775, 10 L.Ed.2d 823 (1963)). I would not attempt to adopt the correct legal standard and on appeal apply it to these facts. Rather, I would remand this case to the district court for application of the correct legal standards. It would be for the trial court to decide whether those standards necessitate a new factual inquiry.

The majority denies that *Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), extends to higher education, and Judge Goldberg's dissent disputes this assertion. With all respect, the question is not the application of *Green* to higher education. *Green* rejected freedom of choice plans as a complete response to the state's duty to end segregated schools. Contrary to the implicit assumptions of the majority, however, *Green* is not the genesis of the state's constitutional duty to correct the injury it has unconstitutionally caused. The duty to undo the wrong springs directly from *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

To my light, *Green* rests on a system of mandated education and has little application to a system of higher education that has no compulsory attendance. But concluding that *Green* is inapplicable to higher education does not carry the further conclusion that a state that has maintained a dejure system does not remain under a continuing obligation to otherwise administer its university program in ways calculated to undo the injuries of its segregated past.

Bazemore v. Friday, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986), is not contrary to the position I urge today. In *Bazemore* the court held that, because the students enjoyed the right to choose the club they wished and because the differing make-ups of the clubs were not the product of discrimination, the state had done its duty. Here, we deal with the delivery by a state of an array of educational services. That it has no constitutional duty to achieve any particular racial mix is not necessarily a full response to the more general question of whether it has discharged its duty to undo its wrong. Having openly discriminated in the delivery of educational service in virtually all its operations, Mississippi remains under a duty not to perpetuate segregation by its policies. Curiously, the district court found that

> the defendants undertake to fund more institutions of higher learning than are justified by the amount of financial resources available to the state, but that is a policy decision of the Legislature that affects the quality of the institutions among which the monies must be so thinly divided. Such a decision by the Legis-

* I would affirm the district court's judgment that Mississippi is not engaged in purposeful discrimination. It follows that the inquiry on the remand I would order would focus on the causal relationship between the de jure system and the present practices, as I explain in the text.

> lature goes to the quality of the institutions and not to the constitutionality of the funding.

674 F.Supp. 1523, 1564 (N.D.Miss.1987). The district court noted the

> inefficiency ... of having two state universities only 20 miles apart in the eastern part of the state with separate administrations and duplicating programs, and two state universities on the western side of the state only 50 miles apart, each with separate administrations and duplicating programs.

Id. at 1563–64. The district court also found it irrelevant that the state funded "traditionally black and traditionally white universities which duplicate as many as 75% of each other's baccalaureate programs." *Id.* Funding decisions such as these, however, cannot be passed over so summarily if they frustrate the state's duty to eliminate the vestiges of past discrimination.

I reject *Green*'s application to university education because I do not believe the Fourteenth Amendment supports a substantive right to a particular racial mix, certainly in the absence of mandatory and state controlled attendance. I am persuaded that in this context the command of the Fourteenth Amendment translates to fair *process* and here find some common ground with the majority. When a system of higher education presents every person with a truly equal and free choice among schools, that system will be constitutional. Well and good, but the long years of separatism have worn deep traces—so deep that declarations of freedom of choice draped over them are not so easily translated to real choice. The force of this reality led to the much debated constitutional rule in *Green*, fourteen years after *Brown v. Board II*, and although I maintain that its restatement of *Brown* is not applicable to higher education, it yet informs the present question whether Mississippi is discharging its duty.

A state violates its duty to undo its wrong when it makes decisions that directly reinforce the historical traces of separate post-secondary educational paths for blacks and whites. When a party challenging a particular state action demonstrates the adverse effect of that action on the state's duty to remove vestiges of discrimination, the burden should then shift to the state to identify the legitimate state purpose of the action and to prove the absence of an equally effective, less frustrating alternative. Despite the difficulties in other contexts with this familiar equal protection analysis, here it provides a disciplined *process*-based inquiry that pushes federal courts toward the sidelines of education policymaking without leaving states free to ignore their duty. This analysis highlights the importance of segregative *effects* and locates the essential causal relationship between a past dejure dual system and a present de facto one. *Columbus Board of Education v. Penick*, 443 U.S. 449, 501, 99 S.Ct. 2941, 2958–59, 61 L.Ed.2d 666 (1978) (Rehnquist, J., dissenting) ("The relevance of past acts ... depend[s] on whether 'segregation resulting from those actions continues to exist.' ") (quoting *Keyes v. School District*, 413 U.S. 189, 210, 93 S.Ct. 2686, 2698, 37 L.Ed.2d 548 (1973)). Finally, it recognizes that the affirmative duty to undo is confronted in the ongoing administration of the schools. It differs from the majority in another critical respect by not insisting on proof of purpose. *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). This case is about remedy—detecting present effects of the earlier wrong and defining the remedial response. By insisting on proof of purpose, the majority wipes away the earlier wrong by denying the very existence of any notion of perpetuation. Perhaps as a matter of fact Mississippi has discharged its duty to undo any present injury from the past. However, we cannot avoid the inquiry by restricting it to purposeful acts.

The majority rests its decision on the principle of free choice. I have no quarrel with this abstraction since I view Mississippi's constitutional obligation to be to ensure that freedom of choice is real, not just theoretical. But it is not enough that Mississippi no longer operates a de jure segregated educational system; the state must

also cease to perpetuate the traces of segregation.

The judiciary is not competent, nor is it otherwise the appropriate institution, to set education policy. But we are duty-bound to decide this case, a case insisting that the state exercise its right to run its schools within the limits of the Constitution. I do not claim to have answers to the difficult questions to be faced in the specifics of what Mississippi can and must do. Perhaps there is little, but that must be decided by the trial judge operating under the correct legal standard.

We must view this case against the bold relief of the undisputed fact that the first black students were not admitted to Mississippi's white universities until 1962 and that white students were not admitted to the black universities until 1966. A disproportionate share of funding for facilities went without apology to the white institutions until at least 1970, and faculty desegregation did not even begin until the 1970's. Indeed, no comprehensive plan to dismantle the double system was adopted until 1974, and that plan was rejected by H.E.W. and has never been funded. The black schools were distinctively inferior to the white schools. As part of its program of diversity and free choice the schools were assigned educational missions—the white schools were to be "comprehensive" whereas the black "urban" schools were to serve a less ambitious purpose. This earlier discrimination in funding is now said to be only a reflection of the schools' different missions, which are pointed to as examples of desired diversity in educational offerings.

I do not say from this remote appellate post that Mississippi has failed to meet its duty. I say that we have not yet asked that question, and we must.

SORRELS STEEL COMPANY, INC., Plaintiff–Appellee,

v.

GREAT SOUTHWEST CORPORATION, Fireman's Fund Insurance Company, and The American Insurance Company, Defendants–Appellants.

No. 89–4314.

United States Court of Appeals, Fifth Circuit.

Oct. 1, 1990.

Hubbard T. Saunders, IV, Donald Clark, Jr., Crosthwait, Terney, Noble & Allain, Jackson, Miss., Walter W. Eppes, Jr., Eppes, Watts & Shannon, Meridian, Miss., William C. Frye, John S. Vento, Trenam, Simmons, Kemker, Scharf, Barkin, Frye & O'Neill, Tampa, Fla., for defendants-appellants.

David W. Mockbee, Mary Elizabeth Hall, Phelps, Dunbar, Marks, Claverie & Sims, Jackson, Miss., for plaintiff-appellee.

Appeal from the United States District Court for the Southern District of Mississippi, Tom S. Lee, District Judge, Presiding.

Before CLARK, Chief Judge, WISDOM and SMITH, Circuit Judges.

ON PETITION FOR REHEARING

(Opinion July 19, 1990, 5th Cir. 906 F.2d 158)

PER CURIAM:

Our mandate in this case modified the final judgment of the district court and directed further proceedings in accordance therewith. The appellee properly calls to our attention that the mandate contained no instructions with respect to the allowance of interest as required by Fed.R. App.P. 37. Accordingly, we amend our mandate by adding the following language:

> The district court shall determine all matters of interest on the judgment entered on remand in accordance with the

The Legal Provisions Involved in this Case

Amendment XIV.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

34 C.F.R. §100.3(b)(2)

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

34 C.F.R. §100.3(b)(6)(i)

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

of its failure to adopt measures necessary to overcome the effects of past segregation and notified the states of their obligation to file a statewide plan for the desegregation of their public systems of higher education.

For the past seven years the Court reviewed HEW's efforts to desegregate these systems of higher education. In 1977, this Court found that the Department's effort had not been adequate and ordered the Department to require six of the original ten states to submit new desegregation plans and to set specific standards for those plans.

The Court found that "specific commitments (were) necessary for a workable higher education desegregation plan . . . concerning admission, recruitment and retention of students, concerning the placement and duplication of program offerings among institutions, the role and the enhancement of black institutions, and concerning changes in the racial composition of the faculties involved.

Specifically, this Court entered a Second Supplemental Order on April 1, 1977 directing the Department to transmit to the six states of Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia as well as the Court and the plaintiffs criteria specifying the ingredients of acceptable desegregation plans for their institutions of public higher education. Accordingly, on July 8, 1977, the Department published criteria which were amended one month later to take into account suggestions offered by some of the states.

The Court further directed that HEW require each state to submit, within 60 days of receipt of the criteria, a revised desegregation plan and to accept or reject such plans within 120 days thereafter. In September 1977, in response to HEW's request, the six states submitted desegregation plans. After months of intensive negotiations, the Department announced on February 2, 1978, that it was accepting the plans of Arkansas, Florida, and Oklahoma and not accepting plans submitted by Georgia, North Carolina, and Virginia. On the same date, the Department announced that it would publish in the FEDERAL REGISTER, revised criteria which are substantially similar to the criteria published in July.

Where HEW has found that a state has not eliminated the remaining vestiges of segregation in its formerly dual system of public higher education, and is, therefore, in violation of Title VI of the Civil Rights Act of 1964, it is required first to attempt to secure compliance by voluntary means. When those efforts fail, HEW is required to seek enforcement either administratively or through the courts. 42 U.S.C. 200-1; 45 CFR 2000d-1, 45 CFR 80.7(dX1), 80.8. These revised criteria are issued to assist such states in the preparation of desegregation plans as part of the process of securing voluntary compliance.

HEW originally developed the criteria mindful of the instructions of the Court that they comply with constitutional standards and Title VI, conform with sound educational practices, and take into account the unique importance of black colleges. Based on its experience in applying the criteria to six state systems of higher education over the past months, HEW has determined that the criteria provide specific and effective guidance to the states and at the same time, are sufficiently flexible to provide for circumstances which may vary from state to state.

REVISED CRITERIA SPECIFYING THE INGREDIENTS OF ACCEPTABLE PLANS TO DESEGREGATE STATE SYSTEMS OF PUBLIC HIGHER EDUCATION

In late 1969 and early 1970, the Department of Health, Education, and Welfare (HEW) notified ten states that they had not dismantled their statewide dual systems of public higher education. The letters sent by HEW at that time advised each state

PREAMBLE

I. HISTORY OF LEGAL PROCEEDINGS

The criteria set forth below initially were developed by the Department of Health, Education, and Welfare (HEW) pursuant to the specific direction of the United States District Court for the District of Columbia in *Adams* v. *Califano*, Civil Action No. 3095-70, Second Supplemental Order (D.D.C. April 1, 1977). The Court's Order arose from a lawsuit initiated in 1970 to require HEW to take action to enforce the provisions of Title VI of the Civil Rights Act of 1964.[1]

In 1969, the Office for Civil Rights (OCR) determined that ten States[2] were continuing to operate segregated higher education systems in violation of Title VI of the 1964 Civil Rights Act. Although the States were notified of this finding and were requested to submit corrective plans, no administrative enforcement actions were taken when the States failed to submit plans or submitted plans unacceptable to HEW. In February 1973, the *Adams* litigation resulted in a ruling requiring that HEW take appropriate enforcement action. *Adams* v. *Richardson*, 356 F. Supp. 92 (D.D.C. 1973). That ruling was unanimously affirmed by the full United States Court of Appeals for the District of Columbia Circuit, although the Court of Appeals modified the District Court's order and directed HEW to attempt to secure acceptable desegregation plans from the ten States before commencing enforcement proceedings. *Adams* v. *Richardson*, 480 F. 2d 1159 (D.C. Cir. 1973).

[1] Title VI of the Civil Rights Act of 1964 provides: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d.

[2] Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Virginia.

In 1974, HEW accepted desegregation plans from eight of the ten States.[5] Reports covering the first year of implementation were submitted to HEW in 1975. Subsequently, the plaintiffs in the *Adams* case sought further relief and on April 1, 1977, the Court ruled that the 1974 plans did not comply with the criteria previously announced by HEW and that as implemented the plans had failed to achieve significant progress toward higher education desegregation. Based on these findings, the Court ordered HEW to develop and issue within 90 days specific criteria to guide the six States[6] in the preparation of revised desegregation plans.

II. LEGAL AND EDUCATIONAL PRINICIPLES

A. *De jure segregation*

These criteria will be applied to a state which formerly operated a dual system of public higher education under state law, if the Office for Civil Rights determines after investigation that the state has failed to remove the vestiges of racial segregation in its system in violation of Title VI.

B. *Affirmative duty to take effective steps to eliminate de jure segregation*

Where there has been past de jure segregation, states are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination. HEW's regulation implementing Title VI provides that

> In administering a program regarding which the recipient has previously discriminated against persons on the ground of race * * *, the recipient must take affirmative action to overcome the effects of prior discrimination. 45 CFR 80.3(b)(6)(ii).

The 14th Amendment also calls for more than mere abandonment of discrimination through the state's adoption of passive or neutral policies. The United States Supreme Court has held that public school officials have "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which discrimination would be eliminated root and branch." *Green* v. *County School Board of New Kent County*, 391 U.S. 430, 437-38 (1968).

The affirmative duty to desegregate applies with equal force to higher education. *Norris* v. *State Council of Higher Education*, 327 F. Supp. 1368 (E.D. Va. 1971), *aff'd per curiam*, 404 U.S. 907 (1971); *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M.D. Ala. 1967), *aff'd* 389 U.S. 215 (1967); *Geier* v. *Dunn*, 337 F. Supp. 573 (M.D. Tenn. 1972). Additionally, the Supreme Court has made it clear that desegregation plans are not adequate unless they are effective. *See Green* v. *County School Board of New Kent County*, *supra*; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

Consistent with the requirements of Title VI these criteria set forth the elements of a desegregation plan which would eliminate the effects of past discrimination.

C. *Statewide approach*

The Court of Appeals in its en banc opinion in *Adams* directed HEW to undertake a statewide approach and noted the serious problem created by the lack of viable statewide coordinated planning in higher education:

> The problem of integrating higher education must be dealt with on a statewide rather than a school-by-school basis."

> "It is important to note that we are not here discussing discriminatory admission policies of individual institutions. To the extent that such practices are discovered, immediate corrective action is required, but we do not understand HEW to dispute that point. This controversy concerns the more complex problem of systemwide racial imbalance, *Adams* v. *Richardson*, *supra*, 480 F. 2d at 1164-1165 (footnote in original).

The Department has followed this approach since 1969 because we believe statewide planning is consistent with sound educational policy. Thus, these criteria require not only that each institution pursue nondiscriminatory student admission and faculty and staff employment practices, but also that the state system as a whole develop a comprehensive and coordinated statewide desegregation plan embodying those specific affirmative, remedial steps which will prove effective in achieving significant progress toward the disestablishment of the structure of the dual system and which address the problem of "systemwide racial imbalance."

D. *Specificity—goals and timetables*

The District Court in *Adams* concluded that the plans previously adopted by the states had failed to achieve adequate desegregation progress and lacked specific commitments for change as concerns the desegregation of student bodies and faculties, enhancement of traditionally black institutions, and desegregation of the governing boards in higher education systems.

The District Court directed HEW to prepare criteria which would identify for the states the specific elements to be included in their revised desegregation plans. As the District Court stated in response to plaintiffs' oral argument on January 17, 1977:

> What I do want them to do though is be under the compulsion of a court order to submit to the states certain specific requirements which the states must respond to and they should be given a timetable for communicating with the states, and the states should be given some kind of timetable within which to make response. (Transcript, January 17th ruling, emphasis supplied.)

In *Geier* v. *Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977), the Court quoted its Order of December 23, 1969, expressing its dissatisfaction with a state-submitted desegregation plan in that the plan as submitted "lacks specificity, in that there is no showing of funds to be expended, no statement of the number of students to be involved, and most importantly, no time schedules for either the implementation of the projects or the achievement of any goals." 427 F. Supp. at 646.

The Supreme Court has maintained that in a system with a history of segregation there is a need for remedial criteria of sufficient specificity to assure compliance with the law. *See Swann*, supra at 25-26.

In keeping with the Court's view that the Department should submit specific requirements to the states, numerical goals and timetables are set forth in the criteria. The goals are established as indices by which to measure progress toward the objective of eliminating the effects of unconstitutional de jure racial segregation and of providing equal educational opportunity for all citizens of these states. They are benchmarks and provide the states the clear and specific guidance called for by the Court.

These goals are not quotas. The Department is opposed to arbitrary quotas. Failure to achieve a goal is not sufficient evidence, standing alone, to establish a violation of Title VI. In addition, the Office for Civil Rights upon a showing of exceptional hardship or special circumstances by a state, may modify the goals and timetables. Nevertheless, the states are under a statutory obligation to devise and implement plans that are effective in achieving the desegregation of the system.

Most importantly, under these criteria and the goals they set, all applicants must be able to compete successfully. States' efforts under these criteria need not and should not lead to lowering academic standards. States may need to innovate in seeking out

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[5] Louisiana refused to submit a plan and was referred to the Department of Justice, which filed a lawsuit, (*United States* v. *Louisiana*), Civil Action No. 74-68 (M.D. La.) in January 1974. The plan submitted by Mississippi was deemed unacceptable by HEW and the matter was referred to the Department of Justice, which filed a lawsuit, *Ayers* and *United States* v. *Finch*, Civil Action No. D.C. 75-9-K (N.D. Miss.), in March 1975.

[6] The April 1, 1977, Order excludes Pennsylvania (by agreement of the parties to the *Adams* lawsuit) and Maryland, which commenced a separate injunctive suit against HEW's enforcement proceedings now pending in the United States Court of Appeals for the Fourth Circuit (*Mandel* v. *HEW*, No. 76-1494), as well as Louisiana and Mississippi.

talented students who will profit from higher education. They may need to broaden definitions of potential; to discount the effects of early disadvantage on the development of academic competence; and to broaden the talents measured in admissions tests. But new and different yardsticks for measuring potential are not lower standards. They can be more valid measures of true potential and talent. Taken as a whole, these criteria seek to preserve and protect academic standards of excellence.

E. *Special considerations in developing criteria for desegregation in higher education*

A state system of higher education, as with an elementary and secondary school district, is held to an affirmative duty to take remedial action to correct past practices of segregation and discrimination. However, the nature of the remedial action required of a higher education system will differ from that required of a local education district. The court of Appeals in *Adams* noted:

> However, we are also mindful that desegregation problems in colleges and universities differ widely from those in elementary and secondary schools, and that HEW admittedly lacks experience in dealing with them.* * * As regrettable as these revelations are, the stark truth is that HEW must carefully assess the significance of a variety of new factors as it moves into an unaccustomed area. 480 F. 2d at 1164.

In *Norris* v. *State Council of Higher Education*, 327 F. Supp. 1368, 1373 (E.D. Va. 1971, aff'd per curiam, 404 U.S. 907 (1971), the court held:

> The means of eliminating discrimination in public schools necessarily differ from its elimination in colleges, but the state's duty is as exacting.

And in *Sanders* v. *Ellington*, 288 F. Supp. 937, 943 (M.D. Tenn. 1968), the court stated:

> Now in considering the time element for presentation of a plan, I have thought of the complexities of the problem. I recognize that the simple remedies which might be available to a county school board where there is involved a compulsory system of education, a free system of education, and assignment of students, are not available here. Colleges are not compulsory and everyone can testify that they're not free.

Higher education differs from elementary and secondary education in many other ways. Besides being voluntary rather than compulsory, higher education operates on a statewide or regional basis, not local; there are no "attendance zones" in higher education; higher education programs vary from institution to institution and are not uniform; students are free to leave the state or to attend private colleges in pursuit of a higher education.

Furthermore, from state to state significant differences are to be found and must be taken into consideration. In some states strong centralized "system" exists including four year and two year institutions; in others, the four year and two year institutions report to separate boards; in yet others, each institution operates under its own independent board. While none of these differences relieves a state of its obligations under Title VI or its constitutional duties, they must be taken into account in fashioning an appropriate set of criteria to be applicable to six states.

Accordingly, while desegregation cases involving individual elementary and secondary school districts are a guide to a state's duty to take corrective action, they are not dispositive of the particular methods to be designed for the dismantling of a dual system of higher education, for the desegregation of a statewide system, for the removal of the vestiges of racial segregation, and for the correction of "systemwide racial imbalance." As the courts in *Adams* have noted, these are indeed "complex" issues. These criteria are designed specifically for the higher education systems of these six states based on a careful consideration of relevant statutes and court opinions and with due consideration to the unique characteristics of higher education.*

F. *The unique role of the traditionally black colleges*

In keeping with the instructions of the Court, the criteria recognize the unique importance of traditionally black colleges in meeting the educational needs of black students. More than 80 percent of all black college graduates have been trained at black colleges. In the mid-seventies, black colleges continue to graduate almost forty percent of all blacks who receive* college degrees.

Thus it is with good reason that the Court of Appeals in *Adams* recognized the need to take into account "the special problems of black colleges."

> Perhaps the most serious problem in this area is the lack of state-wide planning to provide more and better trained minority group doctors, lawyers, engineers and other professionals. A predicate for minority access to quality post-graduate programs is viable, co-ordinated state-wide higher education policy that takes into account the special problems of minority students and of Black colleges. * * * (T)hese Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education. 480 F. 2d at 1164-1165.

Again in 1977, the District Court in its Second Supplemental Order, p. 4, quoted the above language of the Court of Appeals and went on to state:

> The process of desegregation must not place a greater burden on Black institutions or Black students' opportunity to receive a quality public higher education. The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks. Without suggesting the answer to this complex problem, it is the responsibility of HEW to devise criteria for higher education desegregation plans which will take into account the unique importance of Black colleges and at the same time comply with the Congressional mandate.

The Department does not take this language to mean that the traditionally black institutions are exempt from the Constitution or the requirements of Title VI. To the contrary, traditionally black and traditionally white institutions are subject to the same constitutional and congressional mandate to provide an education to all citizens without discrimination or segregation. White and black institutions are to function as part of a unitary system free of the vestiges of state imposed racial segregation. However, as the Court has instructed, the transition to a unitary system must not be accomplished by placing a disproportionate burden upon black students, faculty, or institutions or by reducing the educational opportunities currently available to blacks.

To achieve the objectives of Title VI, precise methods will need to be fashioned for institutions within a state, each appropriate to the task of overcoming the effects of prior discrimination in the particular instance. Each method will be enforced with equal force and determination. Each method is designed to achieve the same constitutional standard.

II. CONSULTATION PROCESS

In the preparation of the criteria originally promulgated pursuant to court instruction, the Department undertook an extensive consultation process within the Department and with interested outside parties. In an effort to assure that these criteria were both legally and educationally sound, a departmental task force was established to guide their development. The task force combined the multiple disciplines and varied expertise needed to resolve the complex issues and educational policies involved in this desegregation process. Serving on the task force were the General Counsel, the Director of the Office for Civil Rights, the Assistant Secretary for Education, the Commissioner of Education, and

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*For a useful discussion of these issues see Note, "The Affirmative Duty To Integrate Higher Education," 70 *Yale Law Journal* 666 (1970).

*See Elias Blake, Public Policy and the Higher Education of Black Americans," Staff Report, Subcommittee on Constitutional Rights of the Committee on the Judiciary, 94th Cong. 2d Sess. 1976.

*National Center for Education Statistics, Earned Degrees Survey, 1975-76.

the Assistant Secretary for Planning and Evaluation.

The Department also embarked on a program of open dialogue and consultation with parties of interest. The task force members conferred with representatives of the six states collectively and individually. The representatives included college presidents, education officials, and aides to Governors. A special meeting was held with students who attend the public colleges in the six states and representatives of several national student organizations. Four meetings were held with officials of the amicus curiae, National Association for Equal Opportunity in Higher Education, an association of the presidents of 110 predominantly black colleges and universities, both state supported and private. Two panels of nationally recognized educators met for half day sessions to advise the Department.

Finally, plaintiffs' representatives devoted many hours to reviewing and commenting on drafts of the criteria. They also convened a meeting for the Department with 28 citizens from these six states who are most familiar with the higher education desegregation efforts in their respective states.

The Department assumes full and sole responsibility for the content of these criteria. The consultations enumerated above were exceedingly helpful to the Department in the preparation of these criteria, but these discussions do not imply concurrence in the criteria in whole or in part by other parties.

Higher educational systems in these and other states are undergoing difficult adjustments caused by fiscal and demographic trends beyond the control of individual states. Accordingly, the criteria developed for the six states under the *Adams* Order, focused on desegregation efforts to be undertaken within the next five years. Similarly, OCR will seek plans that contain five-year goals from other states which are found to have a duty to eliminate the vestiges of duality in their systems of higher education.

As each state attains the goals set forth in its plan, OCR will assess, in cooperation with that state, the progress thereby made in order to determine what additional steps, if any, are necessary to complete the desegregation process. Furthermore, OCR will periodically review these criteria to assure their adequacy in meeting constitutional requirements, their consistency with rulings of the courts in higher education desegregation, and the mandate of Title VI.

Elements of a Plan

I. Disestablishment of the Structure of the Dual System

An acceptable plan shall commit the state to the goal of organizing and operating the system and institutions of higher education in a manner that promises realistically to overcome the effects of past discrimination and to disestablish the dual system, and which assures that students will be attracted to each institution on the basis of educational programs and opportunities uninhibited by past practices of segregation.

To achieve the disestablishment of the structure of the dual system, each plan shall:

A. *Define the mission of each institution within the state system on a basis other than race.*

Each mission statement shall include at a minimum:

1. The level, range and scope of programs and degrees offered;

2. Geographic area served by the institution; and

3. The projected size of the student body and staff, for each year of the life of the plan.

B. *Specify steps to be taken to strengthen the role of traditionally black institutions in the state system.*

In support of the specific steps required by I.B., the plan shall include:

a Commitments that necessary improvements will be made to permit the traditionally black institutions to fulfill their defined mission. These improvements will extend to physical plant and equipment; quality and range of program offerings; number and quality of faculty; student, faculty and professional staff services; student financial assistance, and other financial support;

2. Commitments that traditionally black institutions will have the resources (including those enumerated in item 1 above), which are at least comparable to those at traditionally white institutions having similar missions.

3. An assessment of the physical plant at traditionally black institutions; and

4. A detailed discription of the resources, expressed in dollars and in numbers of personnel to be assigned, which the state system will provide (and the source for such funds) in order to implement the steps specified in I.B. reported by year for the life of the step or activity.

C. *Commit the state to take specific steps to eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions in the same service area.*

To this end, the plan shall identify existing degree programs (other than core curricula) among institutions having identical or overlapping service areas and indicate specifically with respect to each area what steps the state will take to eliminate such duplication. The elimination of such program duplication shall be carried out consistent with the objective of strengthening the traditionally black colleges.

D. *Commit the state to give priority consideration to placing any new undergraduate, graduate, or professional degree programs, courses of study etc., which may be proposed, at traditionally black institutions, consistent with their missions.*

E. *Commit the state to withhold approval of any changes in the operation of the state system or of any institutions that may have the effect of thwarting the achievement of its desegregation goals.*

F. *Commit the State to advise OCR of proposed major changes in the mission or the character of any institution within the state system which may directly or indirectly affect the achievement of its desegregation goals prior to their formal adoption.*

Such proposed changes include but are not limited to: the establishment or major expansion of programs of study, of departments, or institutions; the alteration of two year to four year institutions; the conversion of a private to a public institution; or the closing or merger of institutions or campuses.

G. *Specify timetables for sequential implementation of the actions necessary to achieve these goals as soon as possible but no later than within five years (by the close of the fifth full academic year after the plan is accepted) unless compelling justification for a longer period for compliance is provided to and accepted by the Department.*

The plan shall include interim benchmarks and goals from which progress toward these objectives may be measured. These timetables and benchmarks shall be appropriate to the nature of the action to be taken. For example, studies of physical plant and resources comparability should be completed promptly; corrective actions (including capital construction) will require longer time periods.

H. *Commit the state and all its involved agencies and subdivisions to specific measures for achievement of the above objectives.*

Such measures may include but are not limited to establishing cooperative programs consistent with institutional missions; reassigning specified programs, course offerings, resources and/or services among institutions; realigning the land grant academic programs so that research, experiment and other educational services are redistributed on a nonracial basis; and merging institutions or branches thereof, particularly where institutions or campuses have the same or overlapping services areas. The measures taken pursuant to this section should be consistent with the objective of strengthening the traditionally black colleges. A detailed description

of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the goals listed above will be rejected by OCR. Revised measures will be required before the plan can be accepted.

II. DESEGREGATION OF STUDENT ENROLLMENT

An acceptable plan shall commit the state to the goal of assuring that the system as a whole and each institution within the system provide an equal educational opportunity, are open and accessible to all students, and operate without regard to race and on a desegregated basis.

To achieve the desegregation of student enrollment, each plan shall:

A. *Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system, taken as a whole, the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.*

(1) Adopt the goal that there shall be an annual increase, to be specified for each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution; and

(2) Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the disparity by at least fifty per cent by the final academic year of the plan. However, this shall not require any state to increase by that date black student admissions by more than 150% above the admissions for the academic year preceding the year in which the plan is requested by HEW.***

*For the purposes of this subsection, the term entering includes first-time transfers from two year and other institutions.

**Thus, where the present entry by black students in four year traditionally white institutions is at a rate of 1,000 students per year and a fully proportional rate would be 3,000 students per year, the state's goal would be an entry rate of 3,000 students per year five years thereafter. A state where the present entry is at a rate of only 500 students per year and full proportionality would be 3,000 students per year would not by that date have to close half the gap (by a rate of 1,750 per year) but only achieve an entry rate of 1,250 students, which is 150% over its present rate of 500.

C. Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools.

This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate and professional study. To assure that this goal can be met in the immediate future special recruitment efforts should be considered at traditionally black institutions. Particular attention should be given to increasing black student enrollment and graduation from those traditionally white four year undergraduate institutions which serve as the feeder institutions for the graduate and professional schools. Achievement of this goal is of particular importance in light of the specific concern expressed by the Court of Appeals in Adams. In assessing progress toward this goal, OCR will give consideration to the number of blacks from each state who enroll in graduate and professional schools outside the state system.

D. Adopt the goal of increasing the total proportion of white students attending traditionally black institutions.

Increased participation by white students at traditionally black institutions must be a part of the process of desegregation of the statewide system of higher education. However, pursuant to the admonition of the courts in *Adams*, "The desegregation process should take into account the unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks," Civil Action No. 3095-70, Second Supplemental Order at p. 4. The following steps are designed to guard against the diminution of higher educational opportunities for black students, to take into account the unique importance of traditionally black colleges and to comply with the mandate of Title VI. Establishment of numerical goals for the enrollment of white students at traditionally black institutions must be preceded by an increasing enrollment of black students in the higher education system and at the traditionally white institutions, as is required by Section II of these criteria. It must also be preceded by the accomplishment of specific steps to strengthen the role of traditionally black institutions, eliminate program duplication, locate new programs at black institutions, and by such other measures as are set forth in Section I.

OCR shall annually review the progress made by each state in increasing participation by black students in higher education and in the disestablishment of the dual school system. Two years after the commencement of the plan, and consistent with such progress, each state system shall specify annual numerical goals for increasing the participation of white students attending the traditionally black institutions.

E. Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two year, four year and graduate public institutions of higher education, and establish interim goals, to be specified by the state system for achieving annual progress.

F. Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

G. Specify numeric goals for II. A, B, and C, and timetables for sequential implementation of actions necessary to achieve these goals as soon as possible but not later than within five years unless another date is specified in this section.

H. Commit the state and all its involved agencies and subdivisions to specific measures to achieve these goals.

Such measures may include, but are not limited to reviewing, monitoring, and revising, as necessary, procedures for student recruitment, admissions, compensatory instruction, counseling, financial aid, and staff and faculty development programs. The detailed description of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the numerical goals will be rejected by OCR. Revised measures will be required before the plan can be accepted.

III. DESEGREGATION OF FACULTY, ADMINISTRATIVE STAFFS, NONACADEMIC PERSONNEL, AND GOVERNING BOARDS

An acceptable plan shall commit the state system to the goal of increasing the number and proportion of black employees, academic and non-academic, throughout the system and of increasing representation of black citizens among appointive positions on the governing boards of the state system and of individual institutions.

To achieve the desegration of faculty, administrators, other personnel, and governing boards, each plan shall:

A. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with mas-

ters degrees in the appropriate discipline from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.

B. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

C. Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall at least equal the proportion of black persons in the relevant labor market area.

D. Assure hereafter and until the foregoing goals are met that for the traditionally white institutions as a whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

E. Specify numeric goals and timetables for sequential implementation of the actions necessary to achieve these objectives including interim benchmarks from which progress toward the objectives may be measured.

These goals, timetables, and benchmarks shall be established in light of, and shall specify, the current and projected rates of vacancies in the various job categories, present and projected labor market availability, and other relevant factors.

F. Commit the state system to take specific measures to achieve these objectives.

Such measures may include, but are not limited to employment programs providing centrilized recruitment, vacancy and applicant listings; transfer options; faculty development programs permitting release time for black faculty to attain the terminal degree; and the interchange of faculty on a temporary or permanent basis among traditionally white and traditionally black institutions within the state system. The detailed description of these measures need not be submitted at the time the plan is filed, but should be filed as a supplementary statement within 30 days thereafter for review and comment by OCR. Measures that offer no reasonable possibility of achieving the goals listed above will be rejected by OCR. Revised measures will be required before the plan can be accepted.

G. Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.

IV. SUBMISSION OF PLANS AND MONITORING

A. After HEW has determined that a state has not eliminated the vestiges of desegregation in its former dual system of public higher education, the state shall submit to OCR a desegregation plan for its system of public higher education to implement the foregoing criteria.

1. The plan shall commit the state to substantial progress toward each of the goals in the first two years of the plan.

2. The plan shall be signed by the governor and by each official or designated person representing the agencies, associations, commissions, offices, and/or institutions responsible for adopting the systemwide and insitutional goals described therein. Such persons or entities must be authorized under state law to perform all actions necessary to achieve these goals.

3. The plan shall certify that achievement of the goals and interim benchmarks specified therein has been adopted as official policy of each official or agency.

B. It is recommended that each state establish a biracial citizens advisory/monitoring committee to assist the state in monitoring the implementation of the plan.

C. Each state shall submit to OCR by August 15 of each year after a plan's acceptance, a comprehensive narrative assessment of its desegregation efforts in the most recent academic year. This narrative assessment shall include:

1. A description of the specific measures which have been taken to achieve the objectives enumerated in the plan and in the criteria;

2. A description of the results achieved, including quantitative indices where appropriate or required;

3. An analysis of the reasons why any steps taken proved inadequate or insufficient; and

4. A description of the steps the state will take to achieve progress and to maintain the timetables set forth in the plan.

D. OCR shall review such narrative reports. If good cause for the failure to meet interim goals is not demonstrated, OCR may impose more stringent requirements, including advance approval by OCR of desegregation methods, in order to assure achievement of the goals of the plan. In the alternative, the Department may initiate enforcement proceedings under Title VI of the Civil Rights Act of 1964, if compliance with Title VI cannot be achieved by voluntary means.

E. Each plan shall provide that the state will furnish to OCR statistical reports, assessments, and such other information as OCR may deem necessary from time to time in order to determine the effectiveness of the state's efforts to achieve the goals described in these criteria. Such information shall include annual statistical reports in substantially the same format used previously by the affected states pursuant to earlier desegregation plans. Specific dates for the submission of the reports will be established by OCR. In the event that subsequent developments call for the submission of additional data, such requirements will be announced after consultation with the states, and the states and institutions shall have sufficient time to develop the system needed for the gathering of additional data.

V. DEFINITIONS

As used in these criteria:

A. "Department" refers to the U.S. Department of Health, Education, and Welfare. In instances where the "Department" is to take certain actions, they may be performed by the Office for Civil Rights or the Director, Office for Civil Rights, on behalf of the Department.

B. "Institution" means any school, college, junior or community college, university, professional or graduate school, administered by or as an agency of the state government. Four year institution means any school, college, or university that offers a baccalaureate or graduate degree. For the purpose of these criteria, "institution" does not refer to private schools or colleges.

C. "State system" means the aggregate of all state public institutions of higher education within the state, whether or not under the governance of the same state agency or board.

D. "Student" means any person enrolled in an instructional program, whether full-time or part-time, subject to exceptions to be specified by the Office For Civil Rights.

E. "Faculty" means all persons employed by an institution as full-time instructional personnel.

F. "Labor market area" means the geographical area in which an institution or campus traditionally recruits or draws applicants possessing the requisite credentials for vacancies in faculty, administrative, or non-academic personnel positions.

G. "Governing board" means that appointed or elected body, whether or not responsible to the governor of a state or to the state legislature, which is charged under state law with the ultimate responsibility for the administration and operation of institutions within the state system of public higher education. A "governing board" may be responsible for the entire

system, for a single campus or institution thereof, or for a specified group of campuses or institutions.

Dated: February 2, 1978.

DAVID S. TATEL,
Director, Office for Civil Rights.

[FR Doc. 78-4091 Filed 2-14-78; 8:45 am]

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
OCT 30 2 30 PM '90
LORETTA G. WHYTE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS

STATE OF LOUISIANA, ET AL.

Civil Action

No. 80-3300

Section "A"

O R D E R

Notwithstanding factual distinctions between Louisiana's and Mississippi's public higher education systems, see, e.g., United States v. Louisiana, 692 F. Supp. 642, 656 n.69 (E.D. La. 1988), and respectfully disagreeing with the majority's conclusion in Ayers v. Allain, 914 F.2d 676 (5th Cir. 1990) (en banc), this Court nonetheless finds that Ayers is both binding and controlling in this cause and that, under Ayers, there are no disputed material facts left for this Court to resolve.[1] Accordingly, the Court VACATES its Order of August 2, 1988,[2] DENIES summary judgment in favor of the United States, GRANTS summary judgment in favor of all defendants, and DIRECTS the Clerk to enter herewith final judgment in accordance with this Order.[3] Each party shall bear its own

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[1] This conclusion is based on the Court's familiarity with every aspect of this litigation including the affidavits, testimony, and depositions taken in connection with all proceedings herein including such in motions for summary judgment, proceedings and testimony before the Special Master, all representations made at all hearings, and all of the parties' submissions to the Court.

[2] This Court construes the Fifth Circuit's remand order to permit this vacation, whether as reconsideration of an interlocutory order or as appropriate relief under F.R.Civ.P. 60(b)(6) to a final order. Cf. Lairsey v. Advance Abrasives Co., 542 F.2d 928, 932 & n.3 (5th Cir. 1976).

[3] As this Court reads the Ayers opinion: absent a discriminatory intent, different mission designations may limit the program and scope of various universities. Thus, a State is not required to fund all educational institutions at the same level or to fund any particular one at any particular level. Therefore, there is no basis whatsoever for this Court to retain any further jurisdiction of this case.

OCT 30 1990

CLERK, U.S. DISTRICT COURT

CHARGE
INDEX
ORDER
HEARING
DOCUMENT No. 26

costs and attorney's fees.

Had this Court a clean, or at least pre-Ayers (en banc), slate, the Court would not vacate its Order herein of August 2, 1988 and would enter a remedial order in the form of "Revised Exhibit A" attached to the Order and Reasons issued this date. Thus, if the judgment entered herewith is reversed on appeal, that proposed remedial order should be considered the Order of this Court without the necessity of a remand.

New Orleans, Louisiana, this 30th day of October, 1990, at 2:29 P.m.

UNITED STATES DISTRICT JUDGE

A. 98

N. THERN DISTRICT OF MISSISSIPPI
FILED

APR 14 1986

Norman L. Gillespie, Clerk
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ORAL ARGUMENT REQUESTED

JAKE AYERS, SR., ET AL	PLAINTIFFS
UNITED STATES OF AMERICA	PLAINTIFF-INTERVENOR
VS.	CIVIL ACTION NO. GC75-9-NB
WILLIAM ALLAIN, ET AL	DEFENDANTS

MOTION FOR SINGLE TRIAL ON ALL ISSUES

The defendants respectfully move the Court for an order granting a single trial on all issues, in lieu of a bifurcated proceeding, and in support hereof would show:

1. Background. On February 24, 1981, at a time when this action was pending before a three-judge court, the managing judge issued a sua sponte ruling that "the issue of constitutional violation should be bifurcated and heard separately from any issue relating to remedies of any sort." The defendants objected to this ruling orally and in writing 1/ and continue to object. Subsequent developments

1/ See Motion served May 22, 1981.

have made it abundantly clear that separate trials of "liability" and, if necessary, "remedy" will not be conducive to expedition and economy and, moreover, will likely lead to prejudice. 2/

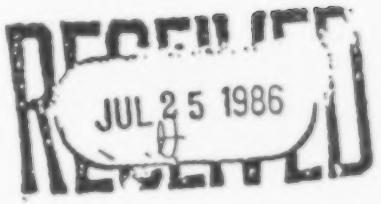
2. The Claim and The Defense. This action has been pending since January 28, 1975. The plaintiff class of black citizens and the United States allege that the state-wide system of public higher education is a "racially dual system" rather than a "dismantled" or "unitary" system; 3/ the plaintiffs and the plaintiff-intervenor predicate their claim of liability upon the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964. The principal remedy sought through this litigation, while never defined or particularized, is for a new and expanded definition of "equal educational opportunity" resulting in judicially imposed enlargement and enhancement of those institutions within the system which are predominantly black. 4/ What is or is not a violation of the equal protection clause is at the heart of the case.

2/ Rule 42(b).

3/ Plainly put, liability is alleged because there are institutions identifiable by race.

4/ The objective of one or more "equal" black universities arguably would promote dualism, i.e., the State is allegedly responsible for racial identifiability of institutions and yet is called upon to entrench duality.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION



JAKE AYERS, SR., ET AL.,	)	
	)	
Plaintiffs	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor	)	
	)	
V.	)	NO. GC75-9-NB
	)	
WILLIAM ALLAIN, ET AL.,	)	(SENIOR COLLEGES)
	)	
Defendants	)	

ORDER DENYING MOTION FOR SINGLE TRIAL

Upon consideration of the defendants' motion for single trial on all issues, the memoranda submitted by the parties hereto, and arguments presented to the court on July 17, 1986, the court finds that the motion is not well taken. It is therefore ORDERED:

That the defendants' motion for single trial on all issues be, and is hereby, DENIED.

THIS, the 23rd day of July, 1986.

Neal Biggers

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

Higher Education

Even greater inequalities exist in the area of higher education. It has been reported earlier that opportunities in this field are limited in the three colleges to undergraduate training in teacher education, in agriculture and the mechanical arts, and in the practical arts and trades; whereas the needs of the white population are served by five colleges, with offerings extending from a variety of undergraduate programs through extensive offerings on the graduate and professional levels. In 1952-53 there were 3,431 students enrolled in all the colleges for Negroes in the State, or 0.3 per cent of the total Negro population; whereas in the colleges and universities for white students, including graduate students, there were enrolled 18,227 students, or 0.9 per cent of the total white population.

Salaries are lower in the institutions for Negroes. The salary range for Negro teachers is lower in all ranks than the range for white teachers.

Of the total of $10,031,539.40 allocated to the institutions for higher education for the period 1952-54, $1,577,175.46, or 15.7 per cent, went toward the development of higher education for Negroes.

The State provides, through the University of Mississippi and other state colleges, ample opportunities for white students to pursue graduate and professional study; but the Negro student has been compelled to go outside the State for this service. For this purpose, the Legis-

lature appropriated only $75,000 for the 1952-54 biennium, "to compensate Negro students who must go to institutions outside the State for certain professional, technical, or graduate studies."

Opportunities have been available to both white and Negro students to obtain training in the fields of human medicine, veterinary medicine, and dentistry through the facilities of the Southern Regional Education Board. Many more white students have been qualified for these opportunities than Negro students. The data are shown in Table 15. For the period 1949-51, 16 Negro students qualified for attendance at Meharry Medical College, but 111 white students qualified for attendance at seven different institutions.

TABLE 15

Institution	*Medicine*	*Dentistry*	*Veterinary Medicine*	*Total*
		White Students		
University of Tennessee	46	12		58
University of Alabama	4			4
Louisiana State University	10			10
Tulane University	7			7
Emory University	5	8		13
University of Maryland		2		2
Alabama Polytechnic			17	17
Total	72	22	17	111
		Negro Students		
Meharry Medical College	11	5		16
Tuskegee Institute				
Total	11	5		16

Source: Adapted from the Report of Board of Trustees, Institutions of Higher Learning, 1949-1951, p. 9.

These inequalities in opportunities contribute to the scarcity of Negroes in the professions. It will be recalled that when the 1945 survey was made there were 22 times as many white doctors in Mississippi in proportion to the white population as Negro doctors in proportion to the Negro population; 13 times as many dentists, 5 times as many pharmacists, 420 times as many lawyers, and 40 times as many social workers.

From 1948-1953, the institutions for white students in the State conferred 14,205 degrees, one for every 131.7

white persons in the population, whereas the colleges for Negroes conferred 1,268 degrees, or one for every 778 Negroes in the total population.

These data have been utilized to establish the point that, in the past, opportunities for the higher education of Negroes in the State have been far less than those provided for other citizens. It should be recognized, however, that there has been awareness of these inequalities on the part of the Board of Trustees of the State Institutions of Higher Learning and the Legislature of the State; and steps have been taken to lessen the gaps. Prior to the recent Supreme Court decision, the Legislature adopted a public school equalization program designed to provide the same quality and quantity of education for Negroes as for whites. On a one-year trial basis, the program called for consolidation of small local schools, equalization of Negro and white teachers salaries, and making a start on equalizing transportation facilities.

P-289

Board of Trustees of State Institutions of Higher Learning

3825 Ridgewood Road
P. O. Box 2336
JACKSON, MISSISSIPPI 39225–2336
(601) 982-6611

Office of the
Executive Secretary and Director

May 2, 1984

RECEIVED
MAY 3 1984
DELTA STATE UNIVERSITY
PRESIDENT'S OFFICE

TO INSTITUTIONAL EXECUTIVE OFFICERS

Gentlemen:

Enclosed are the quotas of first-time entering freshmen considered to be high risk students for your respective institutions for the periods of summer term 1984, fall term 1984, and spring term 1985. These quotas confirm those figures given your institutions earlier by telephone from this office. These figures were retrieved and were calculated from reports filed in this office according to the admission policy adopted by the Board of Trustees on December 20, 1979.

If we may provide clarification, please contact this office.

Sincerely,

E. E. Thrash
Executive Secretary and Director

TCM/lh

Enclosure

A. 105

PX 289

P-289

BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
STATE OF MISSISSIPPI

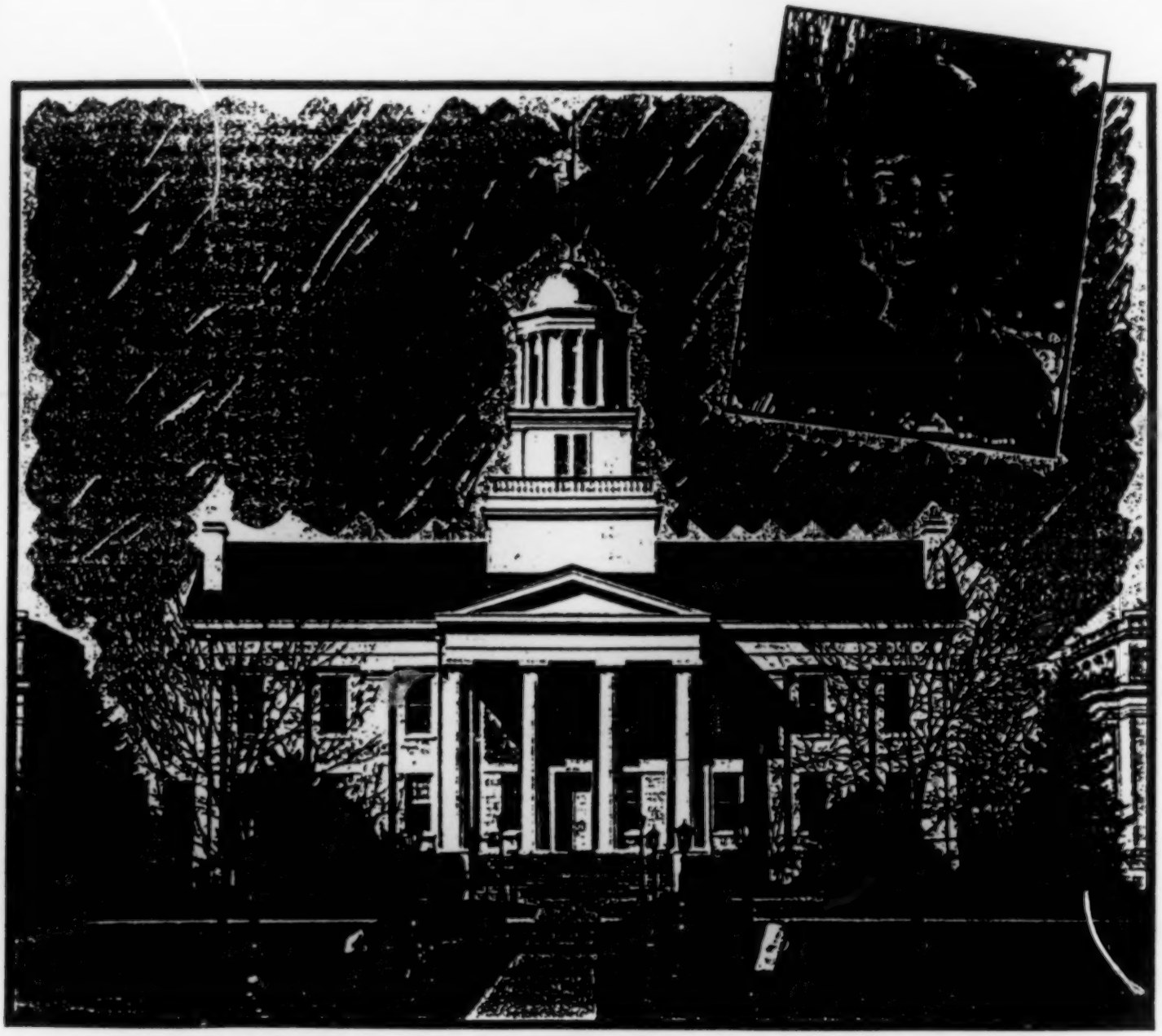
Total Quota of High Risk Students by Institution to be Admitted for Summer, 1984; Fall, 1984; Spring, 1985

Institution	Admitted With Less Than 27 SCH Summer, 1983	Admitted With Less Than 27 SCH Fall, 1983	Admitted With Less Than 27 SCH Spring, 1984	Enrolled Fall, 1982	Total	Quota
Alcorn State University	N/A	N/A	N/A	2,555	2,555	256*
Delta State University	166	631	85	N/A	884	50**
Jackson State University	259	1,562	306	N/A	2,127	106**
Mississippi State University	476	2,225	147	N/A	2,848	142**
Mississippi University for Women	138	443	164	N/A	745	50**
Mississippi Valley State University	208	777	114	N/A	1,099	55***
University of Mississippi	140	1,560	145	N/A	1,845	92**
University of Southern Mississippi	325	1,829	310	N/A	2,464	123**

*Total number to be admitted with less than a 13 ACT composite score.
**Total number to be admitted with less than a 15 ACT composite score.
***Total number to be admitted with less than a 10 ACT composite score excluding students with a 3.0 high school GPA or those students who rank in the upper fifty percent of their graduating class.

A. 106

Using the ACT Assessment on Campus



ACT

PX 292 (excerpts)

The ACT Assessment Program

The ACT Assessment Program is a comprehensive system for information gathering, processing, and reporting designed to help students planning to enter a postsecondary institution. The ACT Assessment instrument consists of a battery of four academic tests, taken under timed conditions, and a Student Profile Section and Interest Inventory, completed when students register for the Assessment.

The academic tests cover four subject matter areas: English, mathematics, social studies, and natural sciences. These tests are designed to assess each student's general educational development and ability to complete college-level work. The test items require that the student demonstrate knowledge and both problem-solving and reasoning ability.

The High School Course/Grade Information section collects self-reported data concerning the particular courses taken and grades earned by students during secondary school. The 30 courses listed in the section were selected to include those that customarily form the basis of a college preparatory (academic) high school curriculum and additional courses frequently required for admission to postsecondary institutions. For each course, the student is asked to indicate whether he/she has taken the course or plans to take it prior to graduation from high school. The student is also asked to report the last grade earned in each course he/she has taken for a full term or more. After providing the course and grade information, the student is asked to sign the form to certify that the data provided are accurate and complete.

The Student Profile Section requests information about each student's admissions and enrollment plans, academic and out-of-class high school achievements and aspirations, and high school coursework. The student is also asked to supply biographical data and self-reported high school grades in the four subject matter areas covered by the academic tests.

The ACT Interest Inventory is designed to measure six major interest dimensions. Results are used to compare the student's interests with those of college-bound students who later majored in each of a wide variety of areas. Inventory results are also used to help students compare their work activity preferences with work activities that characterize specific families of jobs.

The ACT Assessment is administered on five national test dates[1] each academic year throughout the fifty United States, and four times a year in about 70 other countries. National test dates and registration deadlines for 1986-87 are listed on the inside front cover. Approximately 1 million students used the ACT Assessment Program during the 1985-86 testing year.

Purposes of the ACT Assessment Program

The main purposes of the ACT Assessment Program are to:

- help students present themselves as persons with special patterns of educational abilities and needs
- provide information to help students select college majors and make educational and career plans
- provide students with information about their college choices
- provide dependable and comparable information for pre-college counseling in high schools and for on-campus educational guidance
- provide colleges with student admission/enrollment data
- provide colleges with information about students' high school records
- provide estimates of students' academic and out-of-class abilities
- help colleges place freshmen in appropriate sections of introductory courses in English, mathematics, social studies, and natural sciences
- help colleges identify students who would profit from special programs such as honors, remedial, and independent study
- help colleges estimate whether a student should be considered for further examination and advanced placement
- help colleges examine and improve their educational programs
- provide information useful in granting scholarships, loans, and other kinds of financial assistance

The Academic Tests

Characteristics of the Four Academic Tests

The English Usage Test (75 items, 40 minutes). This test measures the student's understanding of the conventions of standard written English: punctuation, grammar, sentence structure, diction and style, and logic and organization. The test does not measure the rote recall of grammatical rules; instead, it stresses the ability to analyze effective expository writing of the kind that will be encountered in college courses. The test consists of several prose passages with certain portions underlined and numbered. For each underlined portion, four alternative responses, including "NO CHANGE," are given. The student must decide which alternative is most appropriate in the context of the passage.

The Mathematics Usage Test (40 items, 50 minutes). This test measures the student's mathematical reasoning ability. It emphasizes the solution of practical quantitative problems that are encountered in many college courses and includes mathematical techniques typically covered in high school courses. The test emphasizes quantitative reasoning, rather than memory of formulas, knowledge of techniques, or computational skill. Each question has five alternative answers, the last of which may be "None of the above."

The Social Studies Reading Test (52 items, 35 minutes). This test measures the student's ability to read, analyze, and evaluate social studies materials. There are two types of items: the first type is based on reading passages, and the second on general background or knowledge obtained in high school social studies courses. The items based on reading passages require reading comprehension skills and the ability to draw inferences and conclusions, to examine the interrelationships and import of ideas, to extend ideas to new situations, to make

[1] The February test date is not available in New York as a result of compliance with legislation in that state. For the same reason, the basic fee is $12.50 in New York.

deductions from experimental or graphic data, and to recognize a writer's bias, style, and mode of reasoning. The background and knowledge items ask the students to apply what they have learned in high school social studies courses to familiar, new, or analogous problems. Each item has four alternative responses.

The Natural Sciences Reading Test (52 items, 35 minutes). This test measures the student's ability to read, analyze, and evaluate material from the natural sciences. There are two types of items: the first type is based on reading passages, and the second on knowledge typically gained in high school science courses. The reading passages concern a variety of scientific topics and problems, often describing scientific experiments and summarizing their procedures and outcomes. The questions based on these passages require reading comprehension skills and the ability to understand and distinguish between the purposes of experiments, to examine the logical relationship between experimental hypotheses and the generalizations that can be drawn from the experiments, to predict the effect of the application of ideas to new situations, to judge the practical value of elements in an experiment, and to evaluate proposed alternative ways of conducting an experiment. The knowledge items ask the students to apply what they have learned in high school science courses to familiar, new, or analogous problems. Although these items do require knowledge of significant facts, the emphasis is on understanding the material rather than rote recall. Only minimal algebraic and arithmetic computations are necessary. Each item has four alternative responses.

Test Development Procedures

Several new forms of the subject matter tests are administered each year. The test development cycle required to produce each new form takes about 2½ years and involves several stages. First, ACT sends detailed item development specifications to the educators who write materials for the tests. These item writers are chosen on the basis of their content expertise and contributions to their respective educational fields. They include high school, college, and university instructors of English, mathematics, social studies and natural sciences, and represent a variety of educational institutions throughout the country.

The item writers whose sample items are judged acceptable are asked to develop a complete set of test materials. These materials are then carefully edited, reviewed by other content specialists, pretested, and reviewed again to check that content is appropriate, keying is accurate, and the test is fair for all examinees. All tests are developed under secure conditions.

General Characteristics of the ACT Standard Score Scale

ACT Standard Score Scale	
Range	1-36
Standard deviation	5-8
Standard error of measurement	1-2
Approximate mean Composite score of college-bound high school students	18

For each of the four academic tests, the raw score is the number of correct responses. These raw scores are converted to standard scores on a scale that ranges from 1 (low) to 36 (high). The Composite score is the average of the standard scores on the four tests. The mean Composite score for college-bound high school students is approximately 18.

No test can measure knowledge and abilities with absolute precision. For this reason, a score on any test is an estimate of an individual's "true" test score. Since all test scores, including ACT scores, contain some amount of measurement error, statisticians have devised ways of estimating the degree to which test scores reflect this error. One such estimate is called the standard error of measurement. The standard error of measurement for each of the four ACT tests is approximately 2 standard score points; for the Composite score, it is about 1 standard score point. For example, if each of a student's five ACT test scores is 18, that student's true score would likely (about 2 times out of 3) be in the range of 16-20 for each test and in the range of 17-19 for the Composite.

Norm Groups Available for Score Comparison

Standard scores can be converted to percentile ranks to facilitate comparisons, within given groups, of a student's performance on the tests with that of other students. In general, a percentile rank tells what percentage of students in a given group scored lower than the student in question.

One normative group especially relevant to ACT-tested students is described by the data in Table 1, Norms Profile Based on ACT Test Scores and High School Grade Averages of College-bound High School Graduating Seniors. This table enables the user to see how a student's scores compare with those of 2,245,414 college-bound high school graduating seniors who took the ACT Assessment from 1982-83 through 1984-85.

Additional normative information is provided in ACT's *College Student Profiles: Norms for the ACT Assessment.* Norms are provided for the ACT test scores and for self-reported high school grades by institutional type and control (e.g., public community colleges, private universities); by region and college type (e.g., Midwestern universities); by curricular major chosen (e.g., secondary education, business administration). In addition, norms are presented for various age groups, estimated family income levels, and racial-ethnic groups.

When should a student take the ACT Assessment?

When choosing a test date, students should consider appropriate application deadlines and allow four to seven weeks for ACT to process and mail score reports. With increased emphasis on early application for colleges, scholarships, and appointments to service academies, many institutions and agencies recommend that students take the ACT Assessment during the second semester of the junior year or during the summer following the junior year.

Historically, ACT has advised students to take the ACT when they have completed a substantial portion of the coursework the exam covers. The elimination of growth adjustments in the ACT scoring procedures reinforces this advice.

Given the curriculum of most schools and the course of study followed by the majority of the students, this point is usually reached by spring of the junior year. However, this will vary from student to student and by the four academic areas measured in the ACT.

Trends in ACT Test Scores

Over time, certain long-term trends are apparent in scores on the ACT Assessment. In addition, small fluctuations occur in these scores from year to year. ACT discourages overinterpretation of the small changes in average scores that occur from one year to the next. Changes in average scores can result from a variety of factors, the most notable being changes in the demographic characteristics of students taking the test.

Average scores on the ACT Assessment clearly showed a downward trend from the late 1960s to the mid 1970s. This decline was a national phenomenon that occurred in all regions and in nearly all states.

Since 1975-76, the average ACT Composite score has varied only slightly from year to year. The very visible decline of the early 1970s ended in 1975-76, and the general level of performance of college-bound students, as indexed by their average ACT Composite scores, has been relatively stable since that time, with no clear trends either upward or downward.

The ACT Assessment and Educationally Disadvantaged Students

ACT test data are used by colleges along with other information in academic advising, placement, and, in some instances, selection. Because the tests measure a student's current level of educational attainment in the knowledge and abilities tested, students who for a variety of reasons (e.g., those for whom social factors have impeded educational development) are educationally disadvantaged, score lower on the tests. This group of educationally disadvantaged students, though comprised predominantly of minority students, encompasses a broad range of racial and ethnic backgrounds. As a group, these students also frequently experience difficulty in the first years of college—as predicted by test scores and prior academic record—largely because of their educational deficiencies.

ACT has studied the validity of the ACT tests for predicting college grades and found that the tests are essentially as predictive for educationally disadvantaged students as for all other students. Thus, colleges that use the ACT test data and other relevant information identifying students as educationally disadvantaged, and that enroll such students, need to provide support for these students to assist them in overcoming the effects of initial educational disadvantage.

Individual colleges' decisions about whether or not to admit educationally disadvantaged students involve value judgments that pertain to the purpose and mission of the institution. If the primary concern of an institution is to enroll students who are likely to be successful academically without extraordinary intervention (e.g., remedial coursework), then few students who are educationally disadvantaged (as identified by test scores and other data) will be selected. If, on the other hand, the institution is willing and able to assist educationally disadvantaged students upon enrollment, then more such students should be selected than indicated by test scores and other academic criteria (e.g., high school grades). ACT recommends that each college carefully examine its sense of purpose and mission relative to such students and then implement practices and procedures consistent with same.

For its part, ACT believes that all students who can succeed in college should have a fair chance of selection. Therefore, ACT recommends that all students be selected with appropriate attention given to qualifications in addition to test scores. A report of ACT research in the area of using test data in selection with emphasis on educationally disadvantaged students is provided in Chapter VII, "Bias in the Uses of Educational Assessment," of Volume One, *Assessing Students on the Way to College: Technical Report for the ACT Assessment Program*, available from ACT Publications for $5.00. The following free reports also are available: ACT Research Bulletin 81-1, *Predictive Validity of the ACT Assessment for Afro-American/Black, Mexican-American/Chicano, and Caucasian-American/White Students*; ACT Research Bulletin 81-2, *Some Facts about the Predictive Validity of the ACT Assessment*.

Is there any penalty for guessing on the ACT Assessment?

There is no penalty for guessing on the test; a student's raw score on each test is simply the number of correct responses. Thus, it is to each student's advantage to answer every question.

Self-reported High School Grade Information

Perhaps the most reliable research findings in education are that high school grades are predictive of college grades and, further, that test scores and high school grades combined are a better predictor of college grades than either alone.

Students taking the ACT Assessment are asked to report the most recent grades earned prior to the senior year in high school in English, mathematics, social studies, and natural sciences. These four grades are used in ACT's Standard and Basic Research Services, along with ACT test scores, to predict a student's overall GPA during the first year or term at a given institution and to predict the probability of earning a C or better in specific courses identified by the institution. (For an explanation of these predictive services, see page 20.)

Several analyses indicate that students report these four grades with a high degree of accuracy. In a national study, correlations between self-reported and school-reported grades ranged from .81 to .86. The study found that 80 percent of the grades reported were accurate and 98 percent were reported accurately within one grade. It also was found that when there is a discrepancy between student-reported and school-reported grades, it is not clear-cut which is accurate. The study found that high school officials sometimes reported the grades inaccurately. For further information regarding the reliability of self-reported grades in the four subject areas, see ACT Research Report No. 45, *The Accuracy of Self-Report Information Collected on the ACT Test Battery: High School Grades and Items of Nonacademic Achievement*.

Expanded High School Course/Grade Information

Effective October 1985, ACT introduced the collection of expanded high school course/grade information for use by postsecondary institutions. The High School Course/Grade Information section on the national registration folder collects basic information about the courses a student has taken or plans to take in high school, and the grades he/she has earned. The information is supplied to college personnel with ACT test results and provides preliminary data useful in college admissions, course placement, academic advising, and counseling. The information may also assist college administrators in addressing recent federal, state, and NCAA secondary school curriculum requirements.

This section collects information concerning 30 secondary-level courses. The particular courses listed include those that customarily form the basis of a college preparatory (academic)

2. Beginning the fall of 1986 in addition to students admitted with a thirteen (13) composite score on the ACT, the institution may enroll a number equivalent to eight (8) percent of the previous year's freshman class enrollees (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of (9) and up to the minimum admissions standards for the current year. Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

3. Students with a nine (9) up to the current admission standard composite score on the ACT and who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's eight (8) percent flexibility allowance.

4. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

5. See Section F.

E. Mississippi Valley State University

1. A minimum of a ten (10) composite score on the ACT is required.

2. In addition to students admitted with a ten (10) composite score on the ACT, the institution may enroll a number equivalent to five (5) percent of the previous year's freshman class enrollees (for summer, fall, and spring terms) to accommodate talented and/or high risk students with an ACT composite score of nine (9). Students with less than 27 semester hours credit may be counted to determine the number of freshmen for this purpose. A student may be counted in any one of the enrollment terms during the fiscal year, but not more than once during the same year.

3. Students with a nine (9) composite score on the ACT who have a 3.0 grade point average on a 4.0 scale or who rank in the upper fifty percent of their graduating class will be exempt from the institution's five (5) percent flexibility allowance.

4. Students who score below twelve (12) on the English portion of the ACT (290 SAT verbal) and/or below twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

5. See Section F.

F. Alcorn State University - Jackson State University - Mississippi Valley State University

1. Any student with an ACT Assessment composite score of 20 or above is exempt from the Board's high school units requirement.

2. Any student with less than the composite score of 20 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT Assessment subtest score of at least 15 on the appropriate subtest. This option is not available for any student with more than one deficiency.

3. Any student with a "B" average (3.0 on a 4.0 scale) in the required high school units in an area (e.g., mathematics) in which the student has no more than one deficiency may be exempt from that deficiency and from the required minimum ACT Assessment subtest score that is required for exemption. This option shall apply to no more than one area.

4. These institutions may offer Board-approved summer courses to high school graduates who have no more than one deficiency in any one area of the required high school units. The intent of these courses will be to fulfill the deficiencies of these students. College credit can be given for these courses, but this credit cannot be counted toward graduation from a Mississippi public university. Students taking these courses may not earn more than six semester hours in a summer school. Students selecting this option must either attend the institution

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Detailed Population Characteristics

MISSISSIPPI

1980 Census of Population

U.S. Department

TABLE 245. PERSONS BELOW SPECIFIED POVERTY LEVEL IN 1979 BY RELATIONSHIP, AGE, SEX, RACE, AND SPANISH ORIGIN: 1980 - CON.

[EXCLUDES INMATES OF INSTITUTIONS, PERSONS IN MILITARY GROUP QUARTERS AND IN COLLEGE DORMITORIES, AND UNRELATED INDIVIDUALS UNDER 15 YEARS. DATA ARE ESTIMATES BASED ON A SAMPLE; SEE INTRODUCTION. FOR MEANING OF SYMBOLS, SEE INTRODUCTION. FOR DEFINITIONS OF TERMS, SEE APPENDIXES A AND B]

MISSISSIPPI

	TOTAL	INCOME IN 1979 BELOW POVERTY LEVEL		INCOME IN 1979 BELOW SPECIFIED POVERTY LEVEL									
				NUMBER					PERCENT				
		NUMBER	PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT
WHITE													
TOTAL PERSONS	1 574 137	198 664	12.6	120 203	284 837	373 305	470 651	564 041	7.6	18.1	23.8	29.9	35.8
UNDER 16 YEARS	389 413	52 109	13.4	33 444	76 292	102 825	131 166	158 793	8.6	19.6	26.4	33.7	40.8
16 TO 21 YEARS	160 458	21 028	13.1	14 380	28 775	37 889	47 844	57 438	9.0	17.9	23.6	29.8	35.8
22 TO 24 YEARS	80 285	8 855	11.0	5 996	12 630	17 106	22 262	27 472	7.5	15.7	21.3	27.7	34.2
25 TO 34 YEARS	247 784	20 829	8.4	13 388	31 823	43 834	58 019	72 603	5.4	12.8	17.7	23.4	29.3
35 TO 44 YEARS	188 474	15 813	8.4	10 065	22 720	31 362	41 215	51 506	5.3	12.1	16.6	21.9	27.3
35 TO 39 YEARS	100 444	8 787	8.7	5 590	12 850	17 843	23 295	29 272	5.6	12.8	17.8	23.2	29.1
40 TO 44 YEARS	88 030	7 026	8.0	4 473	9 870	13 499	17 920	22 234	5.1	11.2	15.3	20.4	25.3
45 TO 54 YEARS	167 921	13 080	7.8	8 524	18 533	24 960	31 884	38 604	5.1	11.0	14.9	19.0	23.0
55 TO 59 YEARS	82 032	8 780	10.7	5 887	12 313	15 486	19 391	23 406	7.2	15.0	18.9	23.6	28.5
60 TO 64 YEARS	73 206	10 689	14.6	6 554	15 108	19 507	24 181	28 363	8.7	20.6	26.6	33.0	38.7
65 YEARS AND OVER	184 592	47 481	25.7	22 185	66 643	82 336	94 707	105 657	12.0	36.1	44.6	51.3	57.2
65 TO 69 YEARS	65 775	12 580	19.1	5 952	18 439	23 620	28 083	32 221	9.0	28.0	35.9	42.7	49.0
70 TO 74 YEARS	53 817	14 120	26.2	6 435	19 852	24 189	28 071	31 221	12.0	36.9	44.9	52.2	58.0
75 YEARS AND OVER	65 000	20 781	32.0	9 798	28 352	34 527	38 553	42 215	15.1	43.6	53.1	59.3	64.9
FEMALE	806 872	113 620	14.1	68 183	161 196	209 321	258 588	307 385	8.5	20.0	25.9	32.0	38.1
UNDER 16 YEARS	188 461	25 450	13.5	16 331	37 364	50 430	63 818	77 424	8.7	19.8	26.8	33.9	41.1
16 TO 21 YEARS	78 489	10 612	13.5	7 249	16 825	19 517	24 488	29 505	9.2	18.9	24.9	31.2	37.3
22 TO 24 YEARS	40 413	4 614	11.4	3 065	6 525	8 908	11 509	14 255	7.6	16.1	22.0	28.5	35.2
25 TO 34 YEARS	124 449	11 639	9.4	7 624	17 537	23 997	31 450	39 123	6.1	14.1	19.3	25.3	31.4
35 TO 44 YEARS	95 294	8 731	9.2	5 632	12 373	16 742	21 836	27 142	5.9	13.0	17.6	22.9	28.5
35 TO 39 YEARS	50 492	4 958	9.8	3 176	7 117	9 662	12 521	15 564	6.3	14.1	19.1	24.8	30.8
40 TO 44 YEARS	44 802	3 773	8.4	2 456	5 256	7 080	9 315	11 578	5.5	11.7	15.8	20.8	25.8
45 TO 54 YEARS	86 405	7 311	8.5	4 821	10 525	13 707	17 492	21 139	5.6	11.9	16.0	20.2	24.5
55 TO 59 YEARS	43 421	5 641	13.0	3 742	7 668	9 516	11 814	14 232	8.6	17.7	21.9	27.2	32.8
60 TO 64 YEARS	39 737	7 087	17.8	4 238	9 808	12 370	15 049	17 497	10.7	24.7	31.1	37.9	44.0
65 YEARS AND OVER	110 203	32 535	29.5	15 481	44 771	54 044	61 132	67 290	14.0	40.6	49.0	55.5	61.1
65 TO 69 YEARS	37 026	8 606	23.2	4 037	12 300	15 334	17 870	20 143	10.9	33.2	41.4	48.3	54.4
70 TO 74 YEARS	31 110	9 538	30.7	4 408	13 089	15 540	17 478	19 304	14.1	42.1	50.0	56.8	62.1
75 YEARS AND OVER	42 067	14 391	34.2	7 044	19 382	23 150	25 584	27 843	16.7	46.1	55.0	60.8	66.2
PERSONS IN FAMILIES	1 430 154	149 710	10.5	89 334	223 875	304 681	391 653	477 475	6.2	15.7	21.3	27.4	33.4
UNDER 25 YEARS	604 344	72 707	12.0	46 251	106 999	145 279	187 125	228 147	7.6	17.6	24.0	30.9	37.8
25 TO 34 YEARS	224 326	18 214	8.0	11 349	28 516	39 716	52 849	66 467	5.0	12.6	17.5	23.6	29.6
35 TO 44 YEARS	179 879	14 561	8.1	9 152	21 208	29 457	38 908	48 848	5.1	11.8	16.4	21.6	27.2
45 TO 64 YEARS	289 856	22 893	7.9	13 825	34 072	46 104	59 301	72 069	4.8	11.8	15.9	20.5	24.9
65 YEARS AND OVER	127 749	21 305	16.7	8 757	33 080	44 125	53 470	61 944	6.9	25.9	34.5	41.8	48.5
FAMILY HOUSEHOLDER	452 426	45 857	10.1	26 774	68 902	93 397	119 634	145 175	5.9	15.2	20.6	26.4	32.1
15 TO 24 YEARS	32 982	4 092	12.4	2 797	6 324	8 561	11 317	13 745	8.5	19.2	26.0	34.3	41.7
25 TO 34 YEARS	105 044	9 428	9.0	6 052	14 601	20 128	26 488	32 905	5.8	13.9	19.2	25.2	31.3
35 TO 44 YEARS	92 655	8 229	8.9	5 219	11 907	16 473	21 603	26 974	5.6	12.9	17.8	23.3	29.1
35 TO 39 YEARS	49 228	4 569	9.3	2 916	6 671	9 360	12 142	15 224	5.9	13.6	19.0	24.7	30.9
40 TO 44 YEARS	43 427	3 660	8.4	2 303	5 236	7 113	9 461	11 750	5.3	12.1	16.4	21.8	27.1
45 TO 54 YEARS	80 891	5 635	7.0	3 555	8 100	11 038	14 553	17 514	4.4	10.0	13.6	17.7	21.7
55 TO 59 YEARS	37 771	2 894	7.7	1 988	4 355	5 674	7 233	8 972	5.3	11.5	15.0	19.1	23.8
60 TO 64 YEARS	32 409	3 206	9.9	1 814	4 758	6 518	8 415	10 077	5.6	14.7	20.1	26.0	31.1
65 YEARS AND OVER	70 654	12 375	17.5	5 349	18 857	25 005	30 225	34 988	7.6	26.7	35.4	42.8	49.5
65 TO 69 YEARS	27 904	3 464	12.4	1 650	5 434	7 553	9 439	11 224	5.8	19.5	27.1	33.8	40.2
70 TO 74 YEARS	21 489	3 950	18.4	1 732	6 023	7 808	9 521	11 055	8.1	28.0	36.3	44.3	51.4
75 YEARS AND OVER	21 259	4 961	23.3	1 987	7 400	9 644	11 265	12 709	9.3	34.8	45.4	53.0	59.8
RELATED CHILDREN UNDER 18 YEARS	444 595	58 109	13.1	37 012	84 803	114 444	145 976	177 155	8.3	19.1	25.7	32.8	39.8
UNDER 3 YEARS	70 468	9 617	13.6	6 109	14 419	19 381	25 428	30 528	8.7	20.5	27.5	36.1	43.3
3 AND 4 YEARS	44 675	6 362	14.2	4 036	9 399	12 544	15 773	19 055	9.0	21.0	28.1	35.3	42.6
5 TO 17 YEARS	329 454	42 150	12.8	26 867	60 985	82 519	104 775	127 580	8.2	18.5	25.0	31.8	38.7
5 YEARS	22 586	3 040	13.5	1 967	4 660	6 182	7 849	9 561	8.7	19.7	27.4	34.8	42.3
6 TO 13 YEARS	197 992	26 108	13.2	16 882	37 989	51 355	65 233	79 262	8.5	19.2	25.9	32.9	40.0
14 TO 17 YEARS	108 876	13 002	11.9	8 018	18 336	24 982	31 693	38 757	7.4	17.0	22.9	29.1	35.6
OTHER RELATIVES	533 135	45 744	8.6	25 548	70 170	96 840	126 043	155 147	4.8	13.2	18.2	23.6	29.1
UNDER 25 YEARS	128 747	18 506	8.2	6 462	15 872	22 274	29 832	37 249	5.0	12.3	17.3	23.2	28.9
25 TO 34 YEARS	121 262	8 788	7.2	5 297	13 915	19 588	26 561	33 362	4.4	11.5	16.2	21.7	27.7
35 TO 44 YEARS	87 224	6 362	7.3	3 933	9 301	12 984	17 305	21 674	4.5	10.7	14.9	19.8	25.1
45 TO 64 YEARS	138 785	11 158	8.0	6 468	16 859	22 874	29 300	35 506	4.7	12.1	16.5	21.1	25.6
65 YEARS AND OVER	57 045	8 930	15.6	3 408	14 223	19 120	23 245	26 956	6.0	24.9	33.5	40.7	47.2
PERSONS IN FAMILIES WITH FEMALE HOUSEHOLDER, NO HUSBAND PRESENT	334 683	90 142	26.9	20 705	60 738	81 191	60 406	69 198	18.1	35.5	44.6	52.7	60.5
UNDER 25 YEARS	55 986	18 730	33.5	13 324	24 015	29 265	33 904	38 173	23.8	42.9	52.3	60.6	68.2
25 TO 34 YEARS	14 065	3 409	24.2	2 327	4 622	5 882	7 060	8 215	16.5	32.9	41.8	50.2	58.4
35 TO 44 YEARS	11 618	2 868	24.7	1 918	3 753	4 847	5 809	6 814	16.5	32.3	41.7	50.0	58.7
45 TO 64 YEARS	18 122	3 043	16.8	1 917	4 546	5 975	7 294	8 513	10.6	25.1	33.0	40.2	47.0
65 YEARS AND OVER	14 894	2 092	14.0	1 219	3 802	5 222	6 339	7 481	8.2	25.5	35.1	42.6	50.2
FAMILY HOUSEHOLDER	41 125	9 720	23.6	6 648	13 526	17 238	20 603	23 890	16.2	32.9	41.9	50.1	58.1
15 TO 24 YEARS	2 103	909	43.2	732	1 122	1 316	1 506	1 633	34.8	53.4	62.6	71.6	77.7
25 TO 34 YEARS	8 029	2 590	32.3	1 894	3 502	4 388	5 165	5 886	23.6	43.6	54.7	64.3	73.3
35 TO 44 YEARS	8 622	2 308	26.8	1 550	3 023	3 821	4 581	5 398	18.0	35.1	44.3	53.1	62.6
35 TO 39 YEARS	4 543	1 397	30.8	924	1 793	2 283	2 701	3 093	20.3	39.5	50.3	59.5	68.1
40 TO 44 YEARS	4 079	911	22.3	626	1 230	1 538	1 880	2 305	15.3	30.2	37.7	46.1	56.5
45 TO 54 YEARS	6 892	1 262	18.3	785	1 755	2 243	2 791	3 225	11.4	25.5	32.5	40.5	46.8
55 TO 59 YEARS	3 286	565	17.2	413	791	999	1 225	1 525	12.6	24.1	30.4	37.3	46.4
60 TO 64 YEARS	2 742	514	18.7	325	733	937	1 089	1 276	11.9	26.7	34.2	39.7	46.5
65 YEARS AND OVER	9 447	1 572	16.6	951	2 600	3 534	4 246	4 949	10.1	27.5	37.4	44.9	52.4
65 TO 69 YEARS	2 746	477	17.4	268	689	976	1 167	1 384	9.8	25.1	35.5	42.5	50.4
70 TO 74 YEARS	2 267	424	18.7	260	695	908	1 087	1 254	11.5	30.7	40.1	47.9	55.3
75 YEARS AND OVER	4 434	671	15.1	423	1 216	1 650	1 992	2 311	9.5	27.4	37.2	44.9	52.1
RELATED CHILDREN UNDER 18 YEARS	41 601	15 805	38.0	11 280	20 038	24 283	27 890	31 041	27.1	48.2	58.4	67.0	74.6
UNDER 3 YEARS	3 999	1 968	49.2	1 474	2 339	2 678	2 967	3 203	36.9	58.5	67.0	74.2	80.1
3 AND 4 YEARS	3 532	1 464	41.4	1 139	1 822	2 225	2 517	2 799	32.2	51.6	63.0	71.3	79.2
5 TO 17 YEARS	34 070	12 373	36.3	8 667	15 877	19 380	22 406	25 039	25.4	46.6	56.9	65.8	73.5
5 YEARS	2 021	800	39.6	586	967	1 200	1 420	1 604	29.0	47.8	59.4	70.3	79.4
6 TO 13 YEARS	19 236	7 369	38.3	5 338	9 502	11 562	13 512	14 747	27.7	49.4	60.1	69.2	76.6
14 TO 17 YEARS	12 811	4 204	32.8	2 743	5 408	6 618	7 474	8 688	21.4	42.2	51.7	58.9	67.8
OTHER RELATIVES	31 919	6 617	16.4	2 777	7 174	9 670	11 915	14 267	8.7	22.4	30.3	37.3	44.7
UNDER 25 YEARS	12 282	2 016	16.4	1 312	2 855	3 666	4 508	5 501	10.7	23.2	29.8	36.7	44.8
25 TO 34 YEARS	6 054	819	13.6	433	1 120	1 494	1 895	2 329	7.2	18.6	24.8	31.4	38.6
35 TO 44 YEARS	2 996	560	18.7	368	730	1 026	1 228	1 416	12.3	24.4	34.2	41.0	47.3
45 TO 64 YEARS	5 200	702	13.5	394	1 267	1 794	2 189	2 489	7.6	24.4	34.5	42.1	47.9
65 YEARS AND OVER	5 447	520	9.5	246	1 202	1 688	2 093	2 532	4.5	22.1	31.0	38.4	46.5

PAGE 245. PERSONS BELOW SPECIFIED POVERTY LEVEL IN 1979 BY RELATIONSHIP, AGE, SEX, RACE, AND SPANISH ORIGIN: 1980 - CON.

[EXCLUDES INMATES OF INSTITUTIONS, PERSONS IN MILITARY GROUP QUARTERS AND IN COLLEGE DORMITORIES, AND UNRELATED INDIVIDUALS UNDER 15 YEARS. DATA ARE ESTIMATES BASED ON A SAMPLE; SEE INTRODUCTION. FOR MEANING OF SYMBOLS, SEE INTRODUCTION. FOR DEFINITIONS OF TERMS, SEE APPENDIXES A AND B]

MISSISSIPPI

SEX AND AGE	TOTAL	INCOME IN 1979 BELOW POVERTY LEVEL		INCOME IN 1979 BELOW SPECIFIED POVERTY LEVEL									
				NUMBER					PERCENT				
		NUMBER	PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT
UNRELATED INDIVIDUALS	143 983	48 914	34.0	30 849	60 962	70 424	78 998	86 566	21.4	42.3	49.1	54.9	60.1
15 TO 24 YEARS	23 804	9 285	39.0	7 569	10 698	12 541	14 129	15 756	31.8	44.9	52.7	59.4	66.2
25 TO 34 YEARS	21 438	2 615	12.2	2 039	3 307	4 138	5 170	6 135	9.5	15.4	19.3	24.1	28.6
35 TO 44 YEARS	8 595	1 222	14.2		911	1 512	1 885	2 307	2 658	10.6	17.6	21.9	26.8	30.9
35 TO 39 YEARS	4 634	661	14.3	482	830	1 044	1 244	1 425	10.4	17.9	22.5	26.8	30.8
40 TO 44 YEARS	3 961	561	14.2	429	682	841	1 063	1 233	10.8	17.2	21.2	26.8	31.1
45 TO 54 YEARS	11 498	2 646	23.0	2 033	3 139	3 764	4 535	5 251	17.7	27.3	32.7	39.4	45.7
55 TO 59 YEARS	9 470	2 640	27.9	1 957	3 285	3 797	4 414	5 047	20.7	34.7	40.1	46.6	53.3
60 TO 64 YEARS	12 355	4 370	35.4	2 932	5 458	6 288	7 296	8 006	23.8	44.2	51.0	58.4	64.8
65 YEARS AND OVER	56 843	26 176	46.0	15 428	33 563	38 211	41 237	45 713	23.6	59.0	67.2	72.5	76.9
65 TO 69 YEARS	15 054	5 895	39.2	3 035	7 677	8 955	9 788	10 560	20.1	51.0	59.5	65.0	70.1
70 TO 74 YEARS	14 169	7 580	45.6	3 663	9 564	10 731	11 671	12 239	22.6	59.1	66.3	72.1	75.6
75 YEARS AND OVER	25 600	12 901	50.4	6 732	16 322	18 525	19 778	20 914	26.3	63.8	72.4	77.3	81.7
FEMALE UNRELATED INDIVIDUALS	91 079	35 570	39.1	21 287	44 293	50 817	56 373	61 427	23.4	48.6	55.8	61.9	67.4
15 TO 24 YEARS	9 782	4 218	43.1	3 425	4 805	5 647	6 293	7 091	35.0	49.1	57.7	64.3	72.5
25 TO 34 YEARS	7 872	1 156	14.7	922	1 432	1 833	2 329	2 728	11.7	18.2	23.3	29.6	34.7
35 TO 39 YEARS	3 182	655	20.0	505	799	990	1 231	1 427	15.9	25.1	31.1	38.7	44.8
40 TO 44 YEARS	1 366	317	20.2	256	410	535	642	740	18.5	26.2	34.2	41.0	47.3
45 TO 54 YEARS	1 616	318	19.7	249	389	455	589	687	15.4	24.1	28.2	36.4	42.5
55 TO 59 YEARS	6 659	1 697	25.6	1 324	1 970	2 375	2 891	3 427	20.0	29.7	35.8	43.6	51.5
60 TO 64 YEARS	5 656	1 657	29.2	1 457	2 360	2 725	3 169	3 686	25.8	41.7	48.2	56.0	65.2
65 YEARS AND OVER	9 458	5 355	57.6	2 981	6 369	6 981	8 328	8 623	31.5	67.3	73.8	88.0	91.2
65 TO 69 YEARS	6 605	2 767	41.9	1 506	3 558	3 264	4 784	5 760	22.8	53.9	60.1	72.4	87.2
70 TO 74 YEARS	12 286	6 976	56.8	2 502	6 429	7 396	8 065	8 623	20.4	52.3	60.2	65.6	70.2
75 YEARS AND OVER	13 586	6 118	44.9	3 157	8 206	9 122	9 900	10 360	23.2	60.4	67.1	72.9	76.3
	21 823	11 625	53.2	5 467	13 923	15 746	16 799	17 757	25.1	64.4	72.8	77.7	82.1

TABLE 241. PERSONS BELOW SPECIFIED POVERTY LEVEL IN 1979 BY RELATIONSHIP, AGE, SEX, RACE, AND SPANISH ORIGIN: 1980 — CON.

[EXCLUDES INMATES OF INSTITUTIONS, PERSONS IN MILITARY GROUP QUARTERS AND IN COLLEGE DORMITORIES, AND UNRELATED INDIVIDUALS UNDER 15 YEARS. DATA ARE ESTIMATES BASED ON A SAMPLE; SEE INTRODUCTION. FOR MEANING OF SYMBOLS, SEE INTRODUCTION. FOR DEFINITIONS OF TERMS, SEE APPENDIXES A AND B]

MISSISSIPPI

	Total	Income in 1979 below poverty level		Income in 1979 below specified poverty level									
				Number					Percent				
		Number	Percent	Below 75 percent	Below 125 percent	Below 150 percent	Below 175 percent	Below 200 percent	Below 75 percent	Below 125 percent	Below 150 percent	Below 175 percent	Below 200 percent
BLACK													
TOTAL PERSONS	864 258	383 971	44.4	275 872	478 753	554 438	614 861	665 996	31.9	55.4	64.2	71.1	77.1
UNDER 18 YEARS	318 468	161 773	50.1	123 014	195 853	221 713	241 062	257 883	38.6	61.5	71.4	77.8	83.1
18 TO 21 YEARS	112 691	54 471	48.3	39 821	66 994	77 375	85 623	91 967	35.3	59.4	68.7	76.0	81.6
22 TO 24 YEARS	46 565	15 202	32.6	10 922	20 134	24 542	28 782	32 485	23.5	43.2	52.7	61.8	69.8
25 TO 34 YEARS	115 417	34 167	29.6	24 303	44 779	54 517	63 882	71 871	21.1	38.8	47.2	54.7	62.3
35 TO 44 YEARS	67 808	24 565	36.2	17 458	31 490	37 427	42 318	46 868	25.7	46.4	55.2	62.4	69.1
35 TO 39 YEARS	35 811	12 903	36.0	9 114	16 418	19 487	22 109	24 380	25.5	45.8	54.4	61.7	68.1
40 TO 44 YEARS	31 997	11 662	36.4	8 344	15 072	17 940	20 209	22 488	26.1	47.1	56.1	63.2	70.3
45 TO 54 YEARS	60 538	22 707	37.5	16 159	28 826	34 203	38 690	42 444	26.7	47.6	56.5	63.9	70.1
55 TO 59 YEARS	29 455	11 156	37.9	7 866	14 250	17 121	19 362	21 333	26.7	48.4	58.1	65.7	72.4
60 TO 64 YEARS	29 555	12 769	43.2	9 144	16 295	19 062	21 134	22 892	30.9	55.1	64.3	71.5	77.4
65 YEARS AND OVER	91 763	47 181	51.4	27 183	48 530	54 830	74 806	78 333	29.6	45.5	54.7	80.7	85.4
65 TO 69 YEARS	31 077	14 665	47.1	8 808	18 924	21 713	23 740	25 357	28.3	60.9	69.9	76.4	81.6
70 TO 74 YEARS	24 175	13 375	55.3	7 667	17 275	19 970	21 497	22 689	29.5	66.0	76.3	82.1	86.5
75 YEARS AND OVER	36 511	19 141	52.5	10 713	23 933	26 847	28 771	30 087	31.0	69.3	77.8	83.4	87.2
FEMALE	460 091	216 647	47.1	156 694	266 638	306 257	334 492	362 783	34.1	58.0	66.6	73.2	78.9
UNDER 18 YEARS	153 965	80 716	52.4	61 195	97 146	109 828	119 343	127 505	39.7	63.1	71.3	77.5	82.8
18 TO 21 YEARS	57 978	29 354	50.6	21 612	35 761	41 050	45 244	48 363	37.3	61.7	70.8	78.0	83.4
22 TO 24 YEARS	25 148	9 530	37.9	7 224	12 328	14 531	16 559	18 339	28.7	49.0	57.8	65.8	72.9
25 TO 34 YEARS	62 683	21 819	34.8	16 022	27 898	33 229	37 591	42 056	25.6	44.5	53.0	60.0	67.1
35 TO 44 YEARS	38 080	16 176	42.5	11 736	20 108	23 434	25 928	28 194	30.8	52.8	61.6	68.1	74.0
35 TO 39 YEARS	19 811	8 612	43.5	6 201	10 639	12 448	13 718	14 845	31.3	53.7	62.8	69.2	74.9
40 TO 44 YEARS	18 269	7 564	41.4	5 535	9 469	11 006	12 210	13 351	30.3	51.8	60.2	66.8	73.1
45 TO 54 YEARS	35 673	15 079	42.3	10 967	18 680	21 868	24 260	26 274	30.7	52.4	61.3	68.0	73.7
55 TO 59 YEARS	17 125	7 208	42.1	5 230	8 961	10 386	11 925	13 035	30.5	52.2	61.8	69.6	76.1
60 TO 64 YEARS	16 821	8 043	47.7	5 755	9 972	11 433	12 559	13 544	34.2	59.3	68.0	74.7	80.5
65 YEARS AND OVER	52 620	28 742	54.6	16 957	35 824	40 278	43 261	45 473	32.2	68.1	76.5	82.2	86.4
65 TO 69 YEARS	17 698	8 868	50.1	5 317	11 220	12 727	13 854	14 854	30.0	63.4	71.9	78.3	83.9
70 TO 74 YEARS	14 637	8 167	55.8	4 585	10 212	11 609	12 394	12,497	31.3	69.8	79.3	84.7	88.9
75 YEARS AND OVER	20 285	11 707	57.7	7 055	14 392	15 942	17 013	17 722	34.8	70.9	78.6	83.9	87.4
PERSONS IN FAMILIES	793 974	342 995	43.2	246 956	431 913	503 036	558 878	607 898	31.1	54.4	63.4	70.4	76.6
UNDER 25 YEARS	461 658	227 258	49.2	170 146	278 224	318 349	349 480	373 784	36.9	60.3	69.0	75.7	81.4
25 TO 34 YEARS	105 346	31 284	29.7	22 001	41 378	50 304	58 022	65 983	20.9	39.3	47.8	55.1	62.6
35 TO 44 YEARS	62 242	22 460	36.1	15 735	29 015	34 563	38 992	43 196	25.3	46.6	55.5	62.6	69.4
45 TO 64 YEARS	101 673	36 253	35.7	23 000	47 653	57 333	65 161	71 826	24.6	46.9	56.4	64.1	70.6
65 YEARS AND OVER	63 055	25 740	40.8	14 054	35 643	42 487	47 223	51 109	22.3	56.5	67.4	74.9	81.0
FAMILY HOUSEHOLDER	189 431	73 790	39.0	51 612	94 986	111 905	123 474	137 495	27.2	50.1	59.1	66.2	72.6
15 TO 24 YEARS	14 672	6 367	43.4	4 921	8 052	9 348	10 518	11 445	33.5	54.9	63.8	71.7	78.0
25 TO 34 YEARS	47 450	16 213	34.2	12 009	20 715	24 556	27 789	31 150	25.3	43.7	51.8	58.6	65.6
35 TO 44 YEARS	33 922	13 726	40.5	10 029	17 888	19 966	22 220	24 358	29.6	50.4	58.9	65.5	71.8
35 TO 39 YEARS	17 870	7 292	40.8	5 284	8 914	10 250	11 587	12 615	29.6	49.9	57.3	64.8	70.6
40 TO 44 YEARS	16 044	6 434	40.1	4 743	8 174	9 716	10 633	11 723	29.6	50.9	60.6	66.3	73.1
45 TO 54 YEARS	29 230	11 560	39.5	8 311	14 503	16 914	19 147	20 862	28.4	49.6	57.9	65.5	71.4
55 TO 59 YEARS	13 853	5 133	37.1	3 557	6 625	8 000	8 944	9 828	25.7	47.8	57.7	64.6	70.9
60 TO 64 YEARS	13 457	5 077	37.8	3 709	6 706	7 950	9 062	9 841	27.6	49.9	59.2	67.4	73.2
65 YEARS AND OVER	36 847	15 714	42.6	9 076	21 297	25 151	27 794	30 031	24.6	57.8	68.2	75.4	81.5
65 TO 69 YEARS	13 120	5 224	39.8	3 192	7 035	8 343	9 337	10 299	24.3	53.6	63.6	71.2	78.5
70 TO 74 YEARS	10 872	4 600	42.3	2 822	6 267	7 533	8 284	8 973	26.0	57.6	69.3	76.2	82.5
75 YEARS AND OVER	12 875	5 890	45.7	3 062	7 995	9 275	10 173	10 759	23.8	62.1	72.0	79.0	83.6
RELATED CHILDREN UNDER 18 YEARS	353 502	184 168	52.1	139 259	223 310	253 115	273 226	294 252	39.4	63.2	71.6	77.9	83.2
UNDER 3 YEARS	58 610	29 948	51.1	22 947	36 200	41 327	45 090	48 177	39.2	61.8	70.5	76.9	82.2
3 AND 4 YEARS	37 355	18 287	49.0	14 021	22 327	25 514	27 874	30 058	37.5	59.8	68.3	74.6	80.5
5 TO 17 YEARS	257 539	135 933	52.8	102 291	164 783	186 274	202 262	216 017	39.7	64.0	72.3	78.5	83.9
5 YEARS	18 208	9 108	50.0	7 006	11 221	12 503	13 844	14 835	38.5	61.6	68.7	76.1	81.5
6 TO 13 YEARS	153 462	80 727	52.6	61 252	97 528	110 304	119 643	128 145	39.9	63.6	71.9	78.0	83.5
14 TO 17 YEARS	85 869	46 098	53.7	34 033	56 034	63 467	68 735	73 037	39.6	65.3	73.9	80.1	85.1
OTHER RELATIVES	251 041	85 057	33.9	56 085	113 617	138 014	158 178	176 151	22.3	45.3	55.0	63.0	70.2
UNDER 25 YEARS	93 664	36 723	39.2	25 986	46 862	55 866	63 736	70 087	27.8	50.1	59.8	68.2	75.0
25 TO 34 YEARS	37 896	10 071	26.6	9 992	20 663	25 748	30 233	34 833	17.3	35.7	44.5	52.2	60.2
35 TO 44 YEARS	28 320	8 734	30.8	5 706	11 927	14 597	16 772	18 858	20.1	42.1	51.5	59.2	66.6
45 TO 64 YEARS	65 155	20 483	32.1	9 623	19 819	24 469	28 004	31 295	20.9	43.9	54.2	62.0	69.3
65 YEARS AND OVER	26 206	10 026	38.3	4 978	14 346	17 334	19 429	21 078	19.0	54.7	66.1	74.1	80.4
PERSONS IN FAMILIES WITH FEMALE HOUSEHOLDER, NO HUSBAND PRESENT	258 539	160 714	62.2	127 545	187 520	207 044	220 715	230 827	49.3	72.5	80.1	85.4	89.3
UNDER 25 YEARS	174 700	119 373	68.3	96 726	136 081	147 995	155 888	161 452	55.4	77.9	84.7	89.2	92.4
25 TO 34 YEARS	27 666	13 779	49.8	10 584	16 722	19 134	21 019	22 634	38.0	60.4	69.2	76.0	81.8
35 TO 44 YEARS	16 316	9 105	55.8	6 965	10 920	12 347	13 167	14 022	42.6	66.9	75.7	80.7	85.9
45 TO 64 YEARS	24 628	12 206	49.6	9 090	15 003	17 145	18 984	20 231	36.9	60.9	69.6	77.1	82.1
65 YEARS AND OVER	15 229	6 251	41.0	4 282	8 794	10 423	11 657	12 488	28.1	57.7	68.4	76.5	82.0
FAMILY HOUSEHOLDER	61 669	35 051	56.8	27 330	42 173	47 173	50 785	53 538	44.3	68.4	76.5	82.4	86.8
15 TO 24 YEARS	5 404	3 821	70.7	3 259	4 428	4 756	4 974	5 097	60.3	81.9	88.0	92.0	94.3
25 TO 34 YEARS	14 917	9 100	61.0	7 278	10 785	11 951	12 750	13 395	48.8	72.3	80.1	85.5	89.8
35 TO 44 YEARS	11 962	7 464	62.4	5 837	8 711	9 687	10 194	10 759	48.8	72.8	81.0	85.2	89.9
35 TO 39 YEARS	6 144	3 987	65.1	3 150	4 663	5 163	5 450	5 694	50.6	75.9	84.0	88.7	92.7
40 TO 44 YEARS	5 818	3 467	59.6	2 727	4 048	4 524	4 744	5 065	46.9	69.6	77.8	81.5	87.1
45 TO 54 YEARS	10 439	5 864	56.2	4 482	6 850	7 621	8 379	8 802	42.9	65.6	73.0	80.3	84.3
55 TO 59 YEARS	4 537	2 472	54.4	1 771	2 900	3 302	3 561	3 792	39.0	63.9	72.8	78.5	83.6
60 TO 64 YEARS	4 939	2 886	47.9	1 687	2 363	2 691	2 988	3 175	37.8	60.0	68.3	75.9	80.6
65 YEARS AND OVER	10 471	4 494	42.9	3 256	6 138	7 165	7 939	8 518	30.9	58.6	68.4	75.8	81.3
65 TO 69 YEARS	3 517	1 540	43.8	1 156	2 015	2 324	2 594	2 869	32.9	57.3	66.1	73.8	81.6
70 TO 74 YEARS	2 772	1 256	45.3	943	1 655	1 954	2 138	2 263	34.1	59.7	70.5	77.1	81.6
75 YEARS AND OVER	4 182	1 698	40.6	1 155	2 468	2 887	3 207	3 384	27.1	59.0	69.0	76.7	81.0
RELATED CHILDREN UNDER 15 YEARS	135 778	97 554	71.7	79 614	110 035	118 805	124 213	128 011	58.6	81.0	87.5	91.5	94.3
UNDER 3 YEARS	20 982	15 726	74.9	13 210	17 620	18 898	19 656	20 060	63.0	84.0	90.1	93.7	95.7
3 AND 4 YEARS	13 714	9 821	71.6	8 287	11 143	12 066	12 590	12 972	59.8	81.3	88.0	91.8	94.6
5 TO 17 YEARS	101 082	71 809	71.0	58 197	81 272	87 841	91 967	94 959	57.6	80.4	86.9	91.0	93.9
5 YEARS	6 939	4 981	71.8	4 114	5 768	6 163	6 479	6 594	59.3	83.1	88.8	93.4	95.1
6 TO 13 YEARS	59 870	42 767	71.4	34 884	48 249	52 044	54 420	56 278	58.3	80.6	86.9	90.9	94.0
14 TO 17 YEARS	34 273	24 061	70.2	19 199	27 255	29 634	31 068	32 045	56.0	79.5	86.5	90.6	93.4
OTHER RELATIVES	61 092	28 309	46.3	20 581	35 312	43 966	45 717	49 278	33.7	57.8	67.2	74.8	80.7
UNDER 25 YEARS	35 518	18 198	54.3	13 851	21 618	24 434	26 701	28 344	41.3	64.5	72.9	79.7	84.6
25 TO 34 YEARS	12 719	4 679	36.7	3 226	5 939	7 183	8 269	9 239	25.3	46.6	56.3	64.9	72.5
35 TO 44 YEARS	6 351	1 641	37.7	1 108	2 209	2 668	2 973	3 263	25.4	50.7	61.1	68.3	74.9
45 TO 64 YEARS	5 715	2 034	35.4	1 350	2 840	3 531	4 056	4 462	23.6	50.6	61.8	71.0	78.1
65 YEARS AND OVER	4 758	1 757	36.9	1 044	2 656	3 258	3 718	3 970	22.0	55.8	68.5	78.1	83.4

TABLE 245. PERSONS BELOW SPECIFIED POVERTY LEVEL IN 1979 BY RELATIONSHIP, AGE, SEX, RACE, AND SPANISH ORIGIN: 1980 — CON.

[EXCLUDES INMATES OF INSTITUTIONS, PERSONS IN MILITARY GROUP QUARTERS AND IN COLLEGE DORMITORIES, AND UNRELATED INDIVIDUALS UNDER 15 YEARS. DATA ARE ESTIMATES BASED ON A SAMPLE; SEE INTRODUCTION. FOR MEANING OF SYMBOLS, SEE INTRODUCTION. FOR DEFINITIONS OF TERMS, SEE APPENDIXES A AND B]

MISSISSIPPI

BLACK	TOTAL	INCOME IN 1979 BELOW POVERTY LEVEL		INCOME AS 1979 BELOW SPECIFIED POVERTY LEVEL									
				NUMBER					PERCENT				
		NUMBER	PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT	BELOW 75 PERCENT	BELOW 125 PERCENT	BELOW 150 PERCENT	BELOW 175 PERCENT	BELOW 200 PERCENT
UNRELATED INDIVIDUALS	70 284	40 976	58.3	28 916	46 840	51 394	55 183	58 095	41.1	66.6	73.1	78.5	82.7
15 TO 24 YEARS	8 084	4 188	51.8	3 593	4 737	5 281	5 987	6 471	44.4	58.8	65.3	74.1	80.0
25 TO 34 YEARS	10 071	2 883	28.6	2 302	3 401	4 213	5 040	5 884	22.9	33.8	41.8	50.2	58.4
35 TO 59 YEARS	5 566	2 085	37.5	1 723	2 475	2 864	3 326	3 650	31.0	44.5	51.5	59.8	65.6
60 TO 64 YEARS	2 745	968	35.3	834	1 118	1 322	1 555	1 714	30.4	40.7	48.2	56.6	62.5
65 TO 54 YEARS	2 821	1 117	39.6	889	1 357	1 342	1 771	1 934	31.5	48.1	54.7	62.8	68.6
55 TO 59 YEARS	7 124	3 456	48.5	2 669	3 892	4 463	5 001	5 368	37.5	54.6	62.6	70.2	75.4
60 TO 64 YEARS	4 581	2 674	58.4	2 162	3 051	3 402	3 673	3 900	47.2	66.6	74.3	80.2	85.1
65 YEARS AND OVER	6 170	4 249	68.9	3 538	4 775	5 128	5 351	5 597	54.1	77.4	83.1	86.7	90.7
65 TO 69 YEARS	28 488	21 441	74.7	13 129	24 489	26 043	26 785	27 224	45.8	85.4	90.8	93.4	94.9
70 TO 74 YEARS	8 199	5 722	69.8	3 624	6 701	7 100	7 399	7 564	44.2	81.7	87.6	90.2	92.3
75 YEARS AND OVER	8 012	5 826	72.7	3 524	6 746	7 270	7 488	7 593	44.0	84.2	90.7	93.5	94.8
	12 477	9 893	79.3	5 979	11 042	11 593	11 898	12 067	47.9	88.5	92.9	95.4	96.7
FEMALE UNRELATED INDIVIDUALS	58 500	36 529	68.9	28 731	39 520	31 661	33 109	34 271	48.7	76.7	82.2	86.0	89.0
15 TO 24 YEARS	5 892	3 565	60.5	2 332	3 435	3 864	3 138	3 368	56.5	67.7	73.6	80.6	86.5
25 TO 34 YEARS	4 494	1 225	35.1	976	1 410	1 660	1 881	2 184	27.9	40.6	47.5	55.8	64.5
35 TO 44 YEARS	2 082	1 022	69.1	855	1 157	1 311	1 458	1 549	61.8	55.6	63.0	70.0	74.4
45 TO 54 YEARS	1 105	543	69.5	434	636	721	798	847	59.3	57.6	65.2	72.2	76.7
55 TO 59 YEARS	1 359	2 089	62.6	1 705	2 268	2 562	2 721	2 840	50.9	67.7	76.5	81.2	84.8
60 TO 64 YEARS	2 807	1 754	67.5	1 408	1 969	2 154	2 305	2 374	56.3	75.5	82.6	88.4	91.1
65 YEARS AND OVER	3 834	2 923	76.2	2 300	3 170	3 345	3 462	3 565	60.0	82.7	87.2	90.3	93.0
65 TO 69 YEARS	19 741	15 571	78.8	9 317	16 911	17 765	18 144	18 391	48.4	87.9	92.3	94.3	95.6
70 TO 74 YEARS	5 258	3 920	74.6	2 578	4 455	4 693	4 799	4 894	45.2	84.7	89.3	91.5	93.1
75 YEARS AND OVER	5 349	4 142	77.4	2 446	4 632	4 952	5 045	5 125	45.7	86.6	92.6	94.7	95.8
	9 034	7 389	81.8	4 493	7 824	8 120	8 282	8 372	32.0	90.6	94.0	95.9	97.0

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAKE AYERS, SR., ET AL — PLAINTIFFS

UNITED STATES OF AMERICA — PLAINTIFF-INTERVENOR

VS.

WILLIAM ALLAIN, ET AL., — DEFENDANTS

GC 75-9-NB

DEPOSITION OF LUCIUS S. WILLIAMS, JR.

DEPOSITION TAKEN AT THE INSTANCE OF PLAINTIFFS
IN THE EASTLAND POST OFFICE AND COURTHOUSE,
JACKSON, MISSISSIPPI,
ON THE 14TH DAY OF NOVEMBER, 1986, COMMENCING 10:10 A.M.

REPORTED BY: DEBORAH GUTH
Court Reporter and Notary Public

WINSTEAD & ASSOCIATES
Post Office Box 5353
Jackson, Mississippi 39216
(601) 981-4029

Q. Now, if you could give your rank or position change from that time until the present.

A. Okay. I came to Ole Miss, or the university, on December 19, 1975, as Assistant to the Vice-chancellor.

Q. Who was vice-chancellor there, please?

A. Vice-chancellor was Arthur Derosier at the time.

Q. Spell that?

A. Derosier, D-e-r-o-s-i-e-r.

During that first year, I developed a learning center as a support service for unprepared students. We offered tutorial services in math, reading English, and so forth. And of course, I was director of that learning center.

So now, I'm Assistant to the Vice-chancellor, director of the learning center, and Associate Professor of Education Administration, where I taught two courses at the time in the School of Education.

In 1981 or '82, my title was changed to Assistant Vice-chancellor under Dr. Harvey Lewis, as the Vice-chancellor at the time.

Q. Was there any change in pay? Did you get a raise, Dr. Williams?

A. I'm not sure whether there was a raise that year or not. If I got one, it was a normal raise that

Q. How many vice-chancellors do you have at the University of Mississippi?

A. I believe there are three -- or four now.

Q. Let's say four. Now, could you name those?

A. The vice-chancellor for university relations, vice-chancellor for student affairs, the vice-chancellor for administration, and the vice-chancellor for academic affairs. Three.

Q. Where are you?

A. I'm under the vice-chancellor for academic affairs as Assistant Vice-chancellor.

Q. And as I understand it from a Dr. Marks, who is not academic -- Vice-chancellor for Academic Affairs, among his responsibilities was budgets, deans, directors of various programs and, of course, hiring and, et cetera.

Now, is that -- could you give the duties of the vice-chancellor for the academic affairs at the time you were the Assistant Vice-chancellor?

A. You want me to give you the duties of the vice-chancellor for academic affairs?

Q. Yes. I'm not interested in minute details; but I guess what I'm saying, has the duties changed from when Dr. Harvey Lewis was there and Dr. Morris?

MR. GOODMAN:

That's a different question.

"no."

Q. You helping me. I was trying to get who that person was.

MR. GOODMAN:

And student affairs, he gave an explanatory answer.

MR. CHAMBLISS:

Yes. He said --

You said you thought they had associates.

MR. GOODMAN:

Whatever he said --

A. Somebody helping.

MR. CHAMBLISS:

Q. Now, vice-president of academic affairs -- okay. Fine.

A. Wait a minute. You are going back to my division. The vice-chancellor for academic affairs has -- let me explain this: He has an associate vice-chancellor and an assistant vice-chancellor. I'm the Assistant Vice chancellor. There is an associate vice-chancellor also, who happens to be in the same office with the vice-chancellor.

Q. And he's number two.

A. More or less, number two.

Q. Are you number three, then, Dr. Williams?

A. If you would put us in any kind of order there, I would be number three.

Q. But now, you not over in with the chancellor. You in another place.

A. No, I'm not with the chancellor.

Q. Well, somebody goes in to see the chancellor and the chancellor is not -- the vice-chancellor. Excuse me. Vice-chancellor. And he's not there. Then they try to see -- by the way, who is this associate vice-chancellor?

A. Dr. Walton, Gerald Walton.

Q. Now, they are directed, I guess, to Dr. Gerald Walton.

A. That's right.

Q. Now, if Dr. Gerald Walton is not in and they need something, do you have -- first of all, do they direct those persons with whatever problems they may have, not just with the center, do they direct those persons to you?

A. Well, it hasn't happened often that both of them are out; however, on a few occasions when they were, and people were brought to the campus for something or something --

I can recall one incident where a visitor was coming to the campus and he was to meet with the

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

JAKE AYERS, SR., ET AL.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

V.

CIVIL ACTION NO. GC 75-9-K

WILLIAM WINTER, ET AL.,

Defendants.

DEFENDANT BOARD OF TRUSTEES ANSWERS TO UNITED STATES, PLAINTIFF-INTERVENOR'S FIRST REQUEST FOR ADMISSIONS

Pursuant to Rule 36, Federal Rules of Civil Procedure, the defendants herewith submit the following as their answers to United States, plaintiff-intervenor's first request for admissions:

REQUEST NO. 1:

Management and control of all Mississippi public senior colleges and universities has since 1932 been vested in the Board of Trustees of State Institutions of Higher Learning (hereinafter referred to as the "Board of Trustees").

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered one (1).

REQUEST NO. 2:

The Board of Trustees was created by statute in 1932; in 1944 it became a constitutional board. [1932 Miss. Laws ch. 127; Miss. Const. art. 8, § 213-A]

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered two (2); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of 1932 *Miss. Laws* ch. 127; *Miss. Const.* art. 8, § 213-A.

(excerpts)

REQUEST NO. 9:

The Board of Trustees has the power and duty to exercise general supervision of the affairs of the public senior colleges and universities, their departments, schools and branches; and the care of dormitories, buildings and grounds.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered nine (9); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15(b), *Mississippi Code of 1972*.

REQUEST NO. 10:

The Board of Trustees has the power and the duty to exercise general supervision of the establishment of new courses of study, new departments, and new functions and activities, including the establishment of off-campus course offerings, in each public senior college and university.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered ten (10); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15, *Mississippi Code of 1972*.

REQUEST NO. 11:

The Board of Trustees has the power and the duty to define and modify the role and scope of each public senior college and university.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered eleven (11); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15, *Mississippi Code of 1972*.

REQUEST NO. 12:

The Board of Trustees has the power and duty to establish minimum standards of achievement as prerequisite for admission into public senior colleges or universities, and to determine who shall be privileged to enter, to remain in or to graduate from any public senior college or university.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered twelve (12); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15(b), *Mississippi Code of 1972*.

REQUEST NO. 13:

The Board of Trustees has the power and the duty to select the heads of the various public senior colleges and universities and to exercise control over the hiring of all faculty and staff personnel at all public senior colleges and universities.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered thirteen (13); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15(f), *Mississippi Code of 1972*.

REQUEST NO. 14:

The Board of Trustees has the power and duty to supervise the business methods and arrangements of each public senior college and university; to prepare, recommend and approve operating and capital outlay budgets for each public senior college and university; and to prepare and submit an annual report to the Legislature showing all receipts and disbursements of the various public senior colleges and universities.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered fourteen (14); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15(d) and § 37-101-15(e), *Mississippi Code of 1972*.

REQUEST NO. 15:

The Board of Trustees has the power and duty to conduct all relationships and negotiations between the Legislature and its various committees and the public senior colleges and universities.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered fifteen (15); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-15(d), *Mississippi Code of 1972*.

REQUEST NO. 16:

The Board of Trustees has the power and duty to make any adjustments the Board thinks necessary between the various departments and schools of any public senior college or university or between the different colleges and universities, and to ensure that the broadest possible educational opportunities shall be offered to citizens of Mississippi without inefficient and needless duplication.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered sixteen (16); however, the defendants would deny that the Board of Trustees of State Institutions of Higher Learning has engaged in inefficient and needless duplication of programs and operations in performing its duties to provide higher educational opportunities to the State of Mississippi.

REQUEST NO. 17:

The Board of Trustees has the power and the duty to establish policies for senior colleges and universities to ensure that their activities comply with federal civil rights law, including the Fourteenth Amendment to the U. S. Constitution and Title VI of the Civil Rights Act of 1964.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered seventeen (17); however, the defendants would further state that the Board of Trustees

of Institutions of Higher Learning of the State of Mississippi and each of the eight (8) subordinate universities are in compliance with the federal guidelines and constitutional mandates. Further, since September, 1974, all public institutions of higher learning under the control of this Board has operated under a "Plan of Compliance" which has been accepted as a valid component of a statewide plan to insure that the State of Mississippi is in compliance with federal law including the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

REQUEST NO. 18:

The Board of Trustees has the power and duty to generally supervise all other matters incident to the proper functioning of all public senior colleges and universities.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered eighteen (18); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 37-101-1, et seq., *Mississippi Code of 1972.*

REQUEST NO. 19:

The Board of Trustees is composed of thirteen members selected pursuant to the provisions of Miss. Code Ann. § 37-101-3 (1972).

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered nineteen (19); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of § 213-A, *Mississippi Constitution of 1890* and § 37-101-3, *Mississippi Code of 1972.*

REQUEST NO. 20:

The first black individual to serve on the Board of Trustees, Dr. Robert Walker Harrison, was appointed in 1972.

to public senior colleges and universities furnish certificates from alumni of the senior college or university as a prerequisite to admission.

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-one (41); however, the defendants would further state that the minutes of the Board of Trustees of November 18, 1954, are the best evidence.

REQUEST NO. 42:

The requirement that applicants for admission to public senior colleges and universities furnish alumni certificates was held to violate the equal protection clause of the Fourteenth Amendment to the U. S. Constitution because of "its application to Negro candidates." *Meredith v. Fair,* 298 F.2d 696, 701 (5th Cir. 1962).

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-two (42); however, the defendants would further state that the finding in *Meredith v. Fair,* 298 F.2d 696, 701 (5th Cir. 1962) is the best evidence.

REQUEST NO. 43:

On May 11, 1960, the Mississippi legislature gave the Board of Trustees authority, in its discretion, to determine who will be privileged to enter, remain in or graduate from the institutions of higher learning. [1960 Miss. Laws ch. 291].

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-three (43); however, the defendants would further state that the language in *1960 Miss. Laws ch. 291* is the best evidence of the information contained in this request for admissions.

REQUEST NO. 44:

On May 13, 1961, James H. Meredith, a Negro, filed a complaint in the U. S. District Court, Southern District of Mississippi, alleging that the University of Mississippi had denied him admission because of his race. *Meredith v. Fair,* 199 F. Supp. 754 (S.D. Miss. 1961).

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-four (44); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of *Meredith v. Fair*, 199 F. Supp. 754 (S.D. Miss. 1961).

REQUEST NO. 45:

The U. S. Fifth Circuit Court of Appeals in *Meredith v. Fair*, 293 F.2d 696, 701 (5th Cir. 1962), took "judicial notice that the State of Mississippi maintains a policy of segregation in its schools and colleges."

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-five (45); however, the defendants would further state that the best evidence of the information contained in this request for admissions may be found in the language of *Meredith v. Fair*, 298 F.2d 696, 701 (5th Cir. 1962).

REQUEST NO. 46:

On May 21, 1962, the legislature gave the Board of Trustees authority to establish minimum standards of achievement as a prerequisite for entrance into any of the institutions under its jurisdiction which standard need not be uniform between the various institutions and may be based upon such criteria as the board may establish. [1962 Miss. Laws ch. 367].

ANSWER:

The defendants admit the information contained in the plaintiff's request for admissions numbered forty-six (46); however, the defendants would further state that the finding in *1962 Miss. Laws ch. 367* is the best evidence of the information contained in this request for admissions.

REQUEST NO. 47:

On September 13, 1962, the U. S. District Court, Southern District of Mississippi, entered an order requiring the University of Mississippi to admit James H. Meredith.

ALCORN STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	18	19	20	17	15
# Full-time Black	10	10	11	11	9
% Full-time Black	55.5	52.6	55	64.7	60
# Part-time Black					
% Part-time Black					
Associate Professor					
Total Full-time	25	21	23	23	33
# Full-time Black	17	13	13	14	20
% Full-time Black	68	61.9	56.5	60.9	60.6
# Part-time Black					
% Part-time Black					
Assistant Professor					
Total Full-time	50	52	57	56	51
# Full-time Black	34	33	42	39	35
% Full-time Black	68	63.5	73.7	69.6	68.6
# Part-time Black					
% Part-time Black					
Instructor/Lecturer					
Total Full-time	47	49	59	63	60
# Full-time Black	40	42	52	50	44
% Full-time Black	85.1	85.7	88.1	79.4	73.3
# Part-time Black					
% Part-time Black					

GOVERNMENT EXHIBIT U.S. 742a

JACKSON STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	38	59	57	61	66
# Full-time Black	36	35	35	43	41
% Full-time Black	94.7	59.3	61.4	70.5	66.7
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Associate Professor					
Total Full-time	75	95	92	91	90
# Full-time Black	58	58	58	64	56
% Full-time Black	77.3	61	63	70.3	62.2
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Assistant Professor					
Total Full-time	121	119	109	101	106
# Full-time Black	87	83	80	74	72
% Full-time Black	71.9	69.7	73.4	73.3	67.9
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Instructor/Lecturer					
Total Full-time	52	63	51	44	56
# Full-time Black	49	56	47	40	45
% Full-time Black	94	89	92	91	80
# Part-time Black	*	*	*	*	*
% Part-time Black	*	*	*	*	*
Distinguished Professor					
Total Full-time	0	0	0	0	0
# Full-time Black	0	0	0	0	0
% Full-time Black	0	0	0	0	0
# Part-time Black	0	0	0	0	0
% Part-time Black	0	0	0	0	0

*These figures unavailable.

GOVERNMENT EXHIBIT U.S. 742C

MISSISSIPPI VALLEY STATE UNIVERSITY
FULL-TIME AND PART-TIME FACULTY DATA

	81-82	82-83	83-84	84-85	85-86
Professor					
Total Full-time	19	21	22	21	23
# Full-time Black	12	12	13	12	14
% Full-time Black	63.6	57.1	44.9	57.1	60.9
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Associate Professor					
Total Full-time	29	23	21	25	25
# Full-time Black	26	21	19	20	19
% Full-time Black	89.7	91.3	90.5	80	76
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Assistant Professor					
Total Full-time	66	60	43	43	45
# Full-time Black	50	45	40	33	34
% Full-time Black	75.8	75	93	76.7	75.6
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Instructor/Lecturer					
Total Full-time	33	32	22	21	20
# Full-time Black	26	27	18	17	16
% Full-time Black	78.8	84.4	81.8	80.9	80
# Part-time Black	**	**	**	**	**
% Part-time Black	**	**	**	**	**
Distinguished Professor					
Total Full-time	0	0	0	0	0

*These figures unavailable.
**Separate full-time and part-time figures unavailable.

GOVERNMENT EXHIBIT US. 742f

Summary of U.S. Exhibit #811 (1983 school year)

	UM	MSU	USM	MUW	DSU	JSU	ASU	MVSU
Faculty								
No.B	12	15	21	2	7	219	117	74
%B	2.6%	2.0%	3.6%	1.7%	4.0%	71.3%	72.7%	78.7%
No.W	440	721	559	117	165	80	38	10
%W	95.2%	95.5%	95.1%	97.5%	95.4%	26.1%	23.6%	10.6%
No.B 25t+	4	9	9	1	2	74	29	10
%B 25t+	33.3%	60.0%	42.9%	50.0%	28.6%	33.8%	24.8%	13.5%
No.W 25t+	263	542	344	61	63	41	13	0
%W 25t+	59.8%	75.2%	61.5%	52.1%	38.2%	51.3%	34.2%	0.0%
B%tenured	0.0%	46.7%	14.3%	0.0%	0.0%	39.7%	14.5%	31.1%
W%tenured	51.4%	64.6%	42.6%	59.8%	35.8%	46.3%	31.6%	20.0%
Administrators								
W#	102	138	97	21	29	3	1	2
%W	97.1%	99.3%	98.0%	100.0%	100.0%	5.9%	3.3%	5.0%
B#	3	1	2	0	0	48	29	37
B%	2.9%	0.7%	2.0%	0.0%	0.0%	94.1%	96.7%	92.5%

US 817
DSU
Catalogue

ADMISSION AND CLASSIFICATION

A new student seeking admission to Delta State University must complete the following procedure:

1. *Complete a formal Application for Admission.* Application should be received by the Director of Admissions at least twenty days prior to the opening of the term in which the student desires to enroll.
2. *Request a copy of all previous school records* be sent to the Director of Admissions at least two weeks prior to the date of entrance. All records must be mailed DIRECTLY from official records office of the school or college which the applicant previously attended to: Director of Admissions, Delta State University, Cleveland, Mississippi 38733.
3. *Submit the results of the American College Test.* If official scores are not on file at Delta State, request forms may be obtained from the Office of Admissions.
4. Document proof of immunization for Measles and Rubella.

ADMISSION REQUIREMENTS FOR FRESHMEN:

1. HIGH SCHOOL COURSE REQUIREMENTS

Beginning with the fall term of 1986, all entering freshmen students must have earned the following high school units in grades 9-12:

Subject	Units
English	4 - All must require substantial writing components.
Mathematics	3 - Algebra I, Geometry, and Algebra II.
Science	3 - Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½ - Must include United States History and American Government.
Required Elective	1 - Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

Any student with an ACT assessment composite score of 24 or above is exempt from the high school units requirement.

Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT assessment subtest score of at least 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

2. ACT REQUIREMENT:

A minimum of a fifteen (15) composite score on the ACT is required.

Out-of-state students enrolling as first-time entering freshmen must present a minimum Composite ACT score of 15 or a Scholastic Aptitude Test (SAT) score of 700.

3. First-time entering freshmen foreign students must present a minimum ACT score of 20 or a comparable SAT score and must also present a minimum score of 525 on the Test of English as a Foreign Language (TOEFL).

IMMUNIZATION REQUIREMENTS:

All students (including transfers) entering Delta State for the first time and enrolling for academic credit must document proof of immunization for measles and rubella.

a. Proof of immunization may be documented in the following manner:
   (1) Documentation (month and year) of immunization which was received after the first birthday;
   (2) Positive measles and rubella serology titer with date;
   (3) Physician-documented history of having had measles with date of the disease. History of rubella is not acceptable.
b. Temporary exceptions - one semester:
   (1) Pregnant women;
   (2) Women suspecting pregnancy;
   (3) Women anticipating pregnancy within three months.
c. Permanent exception:
   (1) Medical disease which will cause a permanent contraindication to immunization,
   (2) All persons born prior to 1957.

DEVELOPMENTAL COURSE REQUIREMENTS:

Students who score below twelve (12) on the English portion of the ACT (300 SAT verbal) and/or twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

REQUIREMENTS FOR TRANSFERS.

1. A student who was eligible for admission to the freshmen class at Delta State but chose to attend another institution may transfer at any time as long as the student has a "C" average or better and is eligible to return to that institution.

2. Any student who was **not** eligible for admission to the freshman class must attend an accredited institution of higher learning other than one of Mississippi's eight state supported universities and attain a "C" average (2.0 G.P.A. on a 4.0 scale) in the following 24 semester credit hours.

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

3. A student on academic probation at another college, if otherwise acceptable, is admitted to Delta State University on probation. A student excluded from another college because of academic suspension may be considered for admission to Delta State University on probationary status after remaining out of college for one semester.

ADMISSION OF NON-DEGREE STUDENTS. Students over 21 years of age who do not have an ACT score or a score which does not meet minimum admission requirements may register as a non-degree student. They may register for a maximum of twelve (12) semester hours for one semester. Regular student status may be achieved by meeting the regular admissions standards (including ACT) or by completing a minimum of twelve (12) semester hours with a "C" average.

TRANSFER CREDIT. A junior college graduate who transfers to Delta State University and who has pursued a sound academic program in the junior college should be able to meet the additional requirements to graduate from Delta State University in two academic years. Each department chairman with the approval of an appropriate school dean is authorized to make any reasonable substitutions in course requirements in order not to prolong the residence of junior college transfers. Any junior college transfer who seems to suffer an undue loss of credit is invited to confer with the Vice President for Academic Affairs. It is understood that any student graduating from Delta State University must have an overall grade of "C" on all academic hours required toward the degree. A student enrolled in a junior college for the first two years who plans to enter Delta State University upon graduation should follow the general requirements outlined in the Delta State University catalog for the degree sought.

CREDIT BY EXAMINATION. A maximum of 30 semester hours of undergraduate credit may be earned from the following sources: The Advanced Placement Test, College Level Examination Program (CLEP), and the American College Testing Program.

CREDIT FOR MILITARY SERVICE. A student who has been in active military service for two calendar years or longer may submit a copy of his separation notice (DD Form 214) and receive up to four semester hours of credit in physical education activity courses.

Recommendations of the American Council on Education are used in determining credit allowed for the courses completed in military service schools.

CLASSIFICATION OF STUDENTS. The following schedule is used in classifying students:

Freshmen	0-26 semester hours
Sophomores	27-53 semester hours
Juniors	54-86 semester hours
Seniors	87 and over semester hours
Part-time Undergraduate	less than 12 semester hours
Part-time Graduate	less than 9 semester hours

TOTAL FIRST-TIME FRESHMEN, UNDERGRADUATE, GRADUATE AND PROFESSIONAL HEADCOUNT STUDENT ENROLLMENT BY RACE IN MISSISSIPPI'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION, 1985-86

	FIRST-TIME FRESHMEN					UNDERGRADUATE					GRADUATE					PROFESSIONAL				
	BLACK	WHITE	TOTAL HEADCOUNT	%B	%W	BLACK	WHITE	TOTAL HEADCOUNT	%B	%W	BLACK	WHITE	TOTAL HEADCOUNT	%B	%W	BLACK	WHITE	TOTAL HEADCOUNT	%B	%W
ASU	451	36	487	92.6%	7.4%	2191	99	2290	95.7%	4.3%	217	9	226	96.0%	4.0%					
DSU	95	445	540	17.6%	82.4%	512	2399	2911	17.6%	82.4%	128	345	473	26.2%	72.9%					
JSU	-	-	1095	////	////	4845	84	5271	91.9%	1.6%	681	154	1154	59.0%	13.3%					
MSU	316	2035	2351	13.4%	86.6%	1119	8823	9942	11.3%	88.7%	131	1590	1721	7.6%	92.4%	2	110	112	1.8%	98.2%
MUW	-	-	324	////	////	350	1622	1979	17.7%	82.0%	8	51	60	13.3%	85.0%					
MVSU	421	2	423	99.5%	0.5%	2089	11	2103	99.3%	0.5%	29	1	30	96.7%	3.3%		-			
UM	78	1549	1664	4.7%	93.1%	436	6657	7354	5.9%	90.5%	87	834	1166	7.5%	71.5%	24	459	484	5.0%	94.8%
USM*	191	927	1173	16.3%	79.0%	1438	8796	10770	13.4%	81.7%	178	1886	2210	8.1%	85.3%					
UMMC**																139	1412	1551	9.0%	91.0%
TOTAL	////	////	8057	////	////	12980	28491	42620	30.5%	66.8%	1455	4870	7040	20.7%	69.2%	165	1981	2147	7.7%	92.3%

*Represents combined full-time and part-time enrollment information because headcount enrollment was not provided for this institution.

**Represents black student enrollment for Schools of Medicine and Dentistry only.

-Institution indicated that these figures were unavailable.

////Unable to determine.

Source: Student Enrollment Information provided in Response to U.S.' 5th Set of Interrogatories Nos. 1, 2, 3, and 4.

A. 137

USX 890

GOVERNMENT EXHIBIT US-880

1994-98 BLACK ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

STU SCORE	ACT ENGLISH FREQ	PR	ACT MATHEMATICS FREQ	PR	ACT SOCIAL STU FREQ	PR	ACT NATURAL SCI FREQ	PR	ACT COMPOSITE FREQ	PR
36	0	99	0	99	0	99	0	99	0	99
35	0	99	0	99	0	99	0	99	0	99
34	0	99	0	99	0	99	1	99	0	99
33	0	99	2	99	1	99	2	99	0	99
32	1	99	1	99	4	99	3	99	0	99
31	1	99	2	99	5	99	7	99	0	99
30	3	99	1	99	7	99	21	99	2	99
29	4	99	3	99	9	99	15	99	4	99
28	9	99	10	99	17	99	27	99	7	99
27	22	99	14	99	17	99	23	98	13	99
26	28	99	33	99	50	98	51	98	26	99
25	34	98	35	98	29	98	56	96	34	99
24	65	97	42	98	54	97	86	95	31	98
23	113	96	89	96	85	95	124	93	55	97
22	171	93	51	95	72	94	138	90	77	96
21	195	89	105	93	86	92	131	86	117	94
20	292	84	88	91	102	90	125	85	129	92
19	209	79	71	90	101	88	190	82	130	89
18	331	74	113	88	117	86	439	76	149	86
17	278	68	137	86	109	84	392	68	195	83
16	354	62	160	83	165	81	366	60	247	78
15	303	55	83	80	109	79	423	52	287	73
14	312	49	102	78	131	76	444	44	318	67
13	347	43	242	73	312	72	401	36	368	60
12	340	36	249	69	246	66	412	28	401	53
11	280	30	206	64	289	61	249	21	460	44
10	400	23	149	61	442	54	205	17	486	35
9	236	17	366	56	460	45	246	12	437	26
8	190	13	394	48	481	36	227	7	424	17
7	111	10	295	41	280	28	158	4	342	10
6	132	7	306	35	349	21	68	1	198	5
5	107	4	304	29	318	14	18	1	86	2
4	92	2	318	23	206	9	14	0	34	1
3	36	1	224	18	197	5	2	0	8	0
2	8	0	201	14	84	2	1	0	1	0
1	2	0	590	6	82	1	1	0	0	1
PERCENTAGES OF STUDENTS IN VARIOUS TEST SCORE INTERVALS										
26-36	68	1	66	1	110	2	150	3	52	1
21-25	578	11	322	6	326	6	535	11	314	6
16-20	1464	29	569	11	594	12	1512	30	850	17
1-15	2956	59	4109	81	4036	80	2869	57	3850	76
MEAN	14.2		9.4		10.8		15.0		12.5	
S.D.	5.3		6.5		5.9		4.9		4.7	

NUMBER OF STUDENTS - 5066

1985-86 CAUCASIAN ACT TESTED MISSISSIPPI GRADUATES

TABLE 1.1 DISTRIBUTIONS OF ACT SCORE FREQUENCIES, PERCENTILE RANKS, AND PERCENTAGES FOR MEN AND WOMEN COMBINED (TOTAL)

STD SCORE	ACT ENGLISH FREQ	PR	ACT MATHEMATICS FREQ	PR	ACT SOCIAL STU FREQ	PR	ACT NATURAL SCI FREQ	PR	ACT COMPOSITE FREQ	PR
36	0	99	18	99	0	99	0	99	0	99
35	0	99	11	99	0	99	16	99	0	99
34	0	99	26	99	6	99	35	99	2	99
33	30	99	28	99	32	99	90	99	7	99
32	19	99	49	99	70	99	170	98	31	99
31	48	99	41	99	107	99	327	96	51	99
30	39	99	39	98	161	97	307	93	99	99
29	144	98	93	98	222	96	247	90	136	98
28	150	97	205	96	211	94	312	86	213	96
27	275	95	221	94	199	92	337	85	310	94
26	322	92	399	92	420	89	508	81	325	91
25	322	89	373	88	357	86	558	77	411	88
24	617	85	417	85	497	82	598	71	508	84
23	811	79	598	80	589	77	690	66	533	79
22	931	71	373	76	427	73	607	60	604	74
21	1027	62	600	72	471	69	572	55	614	69
20	1005	53	438	67	514	64	376	50	656	63
19	581	46	451	63	421	60	606	46	657	57
18	793	39	512	59	452	56	1004	39	734	51
17	664	33	503	54	446	52	761	31	706	44
16	733	27	509	50	463	48	620	25	738	38
15	504	21	256	46	354	44	561	20	770	31
14	401	17	542	43	395	41	480	15	581	25
13	436	13	555	38	622	37	400	11	579	20
12	341	10	551	33	547	31	337	8	532	15
11	249	7	485	28	529	27	174	6	452	11
10	252	5	183	25	660	21	152	4	365	7
9	140	3	545	22	555	16	155	3	255	4
8	89	2	503	17	525	11	135	1	173	2
7	70	2	358	14	252	7	51	1	112	1
6	84	1	306	11	303	5	29	0	53	0
5	46	0	292	8	161	3	5	0	17	0
4	21	0	205	6	119	2	3	0	5	0
3	5	0	141	4	80	1	3	0	0	1
2	0	1	135	3	24	0	3	0	0	1
1	0	1	208	1	18	0	0	1	0	1
	PERCENTAGES OF STUDENTS IN VARIOUS TEST SCORE INTERVALS									
26-36	1027	9	1130	10	1428	13	2349	21	1174	10
21-25	1708	33	2361	21	2341	21	3025	27	2670	24
16-20	3856	34	2413	21	2296	20	3367	30	3491	31
1-15	2038	23	5325	47	5164	46	2488	22	3894	35
MEAN	19.0		15.8		16.7		20.3		18.1	
S.D.	5.1		7.5		7.1		6.0		5.6	

NUMBER OF STUDENTS - 11229

17

CROSSTABULATION OF ACTC BY HSGPA

ACTC \ HSGPA	0.5-0.9	1.0-1.4	1.5-1.9	2.0-2.4	2.5-2.9	3.0-3.4	3.5-4.0	ELSE	ROW TOTAL
4			1	1	1		1	1	5
									.0
5	1	2	4	6	4				17
									.2
6	1	4	26	8	9	3		2	53
									.5
7	3	16	30	34	18	4	1	6	112
									1.0
8	8	12	69	46	20	13	2	3	173
									1.5
9	4	26	82	86	33	17	2	5	255
									2.3
10	6	27	92	132	57	44	1	6	365
									3.3
11	4	19	94	197	63	64	4	7	452
									4.0
12	2	25	118	194	95	76	14	8	532
									4.7
13	3	19	104	203	119	97	22	12	579
									5.2
14	1	19	91	160	135	140	24	11	581
									5.2
15	1	21	115	225	177	177	39	15	770
									6.9
16	1	21	102	204	173	186	41	10	738
									6.6
COLUMN TOTAL	43	256	1270	2520	2062	3117	1797	156	11224
	.4	2.3	11.4	22.4	18.4	27.8	16.0	1.4	100.0

(CONTINUED)

A. 140

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USX

28 894 i

03 MAR 87 WHITE 1985-86 ACT-TESTED HS GRADUATES HSGPA BY ACT COMP SCOR
10:23:10 UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSSTABULATION OF ACTC BY HSGPA

ACTC	COUNT / COLUMN PCT	HSGPA 0.5-0.9	1.0-1.4	1.5-1.9	2.0-2.4	2.5-2.9	3.0-3.4	3.5-4.0	ELSE	ROW TOTAL
		1	11	21	31	41	51	61	71	81	
17			11	72	199	143	221	49	11	706
										6.3
18		2	12	68	190	176	211	65	10	734
										6.5
19			3	55	135	153	230	73	8	657
										5.9
20		2	5	48	126	137	231	98	9	656
										5.8
21		2	2	30	94	122	244	109	11	614
										5.5
22			4	29	92	111	234	132	2	604
										5.4
23			4	20	71	91	206	137	4	533
										4.7
24		1		15	48	74	203	164	3	508
										4.5
25			2	6	34	54	171	140	4	411
										3.7
26		1	2	4	14	36	114	152	2	325
										2.9
27				2	12	33	97	165	1	310
										2.8
28					5	19	77	109	3	213
										1.9
29					3	5	30	97	1	136
										1.2
COLUMN TOTAL		43 .4	256 2.3	1278 11.4	2520 22.4	2062 18.4	3117 27.8	1797 16.0	156 1.4	11229 100.0

(CONTINUED)

CROSSTABULATION OF ACTC BY HSGPA PAGE 3 OF 3

ACTC	COUNT / ROW PCT	HSGPA 0.5-0.9 (1)	1.0-1.4 (2)	1.5-1.9 (3)	2.0-2.4 (4)	2.5-2.9 (5)	3.0-3.4 (6)	3.5-4.0 (7)	ELSE (8)	ROW TOTAL
30				1	1	3	14	79	1	99
										.9
31				1		1	9	41		51
										.5
32						1	4	27		31
										.3
33								7		7
										.1
34								2		2
										.0
COLUMN TOTAL		43	256	1278	2520	2062	3117	1797	156	11229
		.4	2.3	11.4	22.4	18.4	27.8	16.0	1.4	100.0

NUMBER OF MISSING OBSERVATIONS = 2

03 MAR 87 BLACK 1985-86 ACT-TESTED HS GRADUATES HSGPA BY ACT COMP SCOR
10:23:20 UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSSTABULATION OF ACTC BY HSGPA

ACTC	COUNT	HSGPA 0.5-0.9	1.0-1.4	1.5-1.9	2.0-2.4	2.5-2.9	3.0-3.4	3.5-4.0	ELSE	ROW TOTAL
		11	21	31	41	51	61	71	81	
2				1						1
										.0
3				2	4		2			8
										.2
4		1	4	11	11	3	3	1		34
										.7
5		1	15	27	27	11	3		2	86
										1.7
6		2	15	62	80	21	12	1	5	198
										3.9
7		4	31	88	124	50	39	1	5	342
										6.8
8		1	24	97	174	67	53	1	7	424
										8.4
9		3	21	93	160	81	59	8	12	437
										8.6
10		2	21	98	173	89	90	9	4	486
										9.6
11		3	8	64	192	90	85	10	8	460
										9.1
12		1	15	64	122	85	94	14	6	401
										7.9
13		1	5	42	109	89	94	19	9	368
										7.3
14		1	4	33	93	77	95	14	1	318
										6.3
(CONTINUED)	COLUMN TOTAL	22 .4	179 3.5	752 14.8	1538 30.4	948 18.7	1187 23.4	361 7.1	79 1.6	5066 100.0

A. 143

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894 j

03 MAR 87 BLACK 1985-86 ACT-TESTED HS GRADUATES HSGPA BY ACT COMP SCOR
10:23:20 UNIVERSITY OF IOWA IBM 4381 OS MVS

CROSSTABULATION OF ACTC BY HSGPA

ACTC	COUNT / COLUMN TOTAL	HSGPA .5-.9 (1)	1.0-1.4 (2)	1.5-1.9 (3)	2.0-2.4 (4)	2.5-2.9 (5)	3.0-3.4 (6)	3.5-4.0 (7)	ELSE (8)	ROW TOTAL
15			3	25	78	68	86	20	7	287
										5.7
16			4	17	56	67	83	18	2	247
										4.9
17		2	1	11	48	37	71	23	2	195
										3.8
18			3	1	26	25	62	30	2	149
										2.9
19			1	4	26	20	49	28	2	130
										2.6
20			3	4	10	21	52	36	1	129
										2.5
21				6	7	12	61	28	3	117
										2.3
22			1	1	5	12	31	26	1	77
										1.5
23				1	4	8	21	21		55
										1.1
24					3	4	10	14		31
										.6
25					5	5	13	11		34
										.7
26					1	3	12	10		26
										.5
27						2	5	6		13
										.3
(CONTINUED)	COLUMN TOTAL	22	179	752	1536	948	1187	361	79	5066
		.4	3.5	14.8	30.4	18.7	23.4	7.1	1.6	100.0

CROSSTABULATION OF ACTC BY HSGPA PAGE 3 OF 3

ACTC	COUNT / HSGPA	0.5-0.9	1.0-1.4	1.5-1.9	2.0-2.4	2.5-2.9	3.0-3.4	3.5-4.0	ELSE	ROW TOTAL
		1	2	3	4	5	6	7	8	
28						1	2	4		7
										.1
29								4		4
										.1
30								2		2
										.0
COLUMN TOTAL		22	179	752	1538	948	1187	361	79	5066
		.4	3.5	14.8	30.4	18.7	23.4	7.1	1.6	100.0

NUMBER OF MISSING OBSERVATIONS = 0

Table 1

Summary Statistics for ACT-Tested Black and White Students Mississippi 1981-82 through 1985-86

Year	Black Students		White Students	
	N	Mean Composite Score	N	Mean Composite Score
1981-82	7,493	11.6	15,372	17.5
1982-83	7,688	11.5	15,080	17.3
1983-84	7,832	11.8	16,424	17.5
1984-85	7,843	11.9	17,703	17.9
1985-86	8,074	12.6	18,905	18.2

Source: Maxey's Deposition Exhibits Nos. 7 through 16 for Black and White ACT-Tested Miss. High School Students.

GOVERNMENT EXHIBIT US-896

Table 1a

Selected Summary Statistics for ACT-Tested High School Graduates Mississippi 1981-82 through 1985-86

	Black Graduates		White Graduates	
Year	N	Mean Composite	N	Mean Composite
1981-82	5,403	11.5	11,850	17.5
1982-83	5,544	11.3	10,771	17.3
1983-84	5,543	11.6	10,826	17.3
1984-85	5,320	11.7	11,150	17.6
1985-86	5,066	12.5	11,299	18.1

Source: Maxey's Deposition Exhibits Nos. 17 through 26 for Black and White ACT-Tested Miss. Graduates.

GOVERNMENT EXHIBIT US-892

1985-86 Mississippi Demographic Survey:

135 Districts Common to 1985-86 and 1986-87 surveys

Total 12th grade	24,160
	- 1,129
	23,031
Total Black	10,885
	- 1,728
	9,157
Total White	13,148
	- 1,994
	11,154
Total Oriental	86
	- 10
	76
Total Hispanic	24
	- 1
	23
Total Amer. Indian	17

Demographic Survey Preliminary Results 1985-86

141 respondents

Black Males	104,485	25.72%
Black Females	101,230	24.92%
White Males	104,154	25.64%
White Females	93,879	23.11%
Oriental Male	814	00.20%
Oriental Female	810	00.20%
Hispanic Male	191	00.05%
Hispanic Female	186	00.05%
Am. Indian Male	232	00.06%
Am. Indian Female	199	00.05%
Other Male	6	00.002%
Other Female	6	00.002%

Results By Race:

Blacks	210,104	50.85%
Whites	200,595	48.55%
Oriental	1,624	00.39%
Hispanic	377	00.09%
Indian	431	00.10%
Other	15	00.004%

Results By Sex:

Male	209,882	51.67%
Female	196,310	48.33%

GOVERNMENT EXHIBIT US-901

PRELIMINARY RESULTS
DEMOGRAPHIC SURVEY
1986-87

150 Respondents

Black Males:	120,907	25.6%
Black Females:	115,627	24.5%
White Males:	120,763	25.5%
White Females:	111,853	23.7%
Oriental Males:	901	.20%
Oriental Females:	856	.18%
Hispanic Males:	267	.06%
Hispanic Females:	214	.05%
Am. Indian Males:	267	.06%
Am. Indian Females:	214	.05%

Results by Race:

Blacks:	236,534	50.02%
Whites:	232,616	49.19%
Orientals:	1,757	.0037%
Hispanics:	481	.0010%
Indians:	499	.0011%
Other:	451	.0010%

Results by Sex:

Males:	243,329	51.46%
Females:	229,009	48.43%

PRELIMINARY RESULTS
DEMOGRAPHIC SURVEY
1986-87

9th GRADE - Total:	**37,012**	
Black	17,640	47.66%
White	19,120	51.66%
Oriental	128	.35%
Hispanic	40	.11%
Amer. Indian	61	.16%
Other	23	.06%
10th GRADE - Total:	**34,829**	
Black	16,486	47.3341%
White	18,133	52.0629%
Oriental	109	.3130%
Hispanic	16	.0459%
Amer. Indian	35	.1005%
Other	50	.1436%
11th GRADE - Total:	**30,868**	
Black	14,373	46.5628%
White	16,336	52.9221%
Oriental	80	.2592%
Hispanic	26	.0842%
Amer. Indian	25	.0810%
Other	28	.0907%
12th GRADE - Total:	**26,818**	
Black	12,164	45.3576%
White	14,516	54.1278%
Oriental	67	.2498%
Hispanic	30	.1119%
Amer. Indian	12	.0447%
Other	29	.1081%

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAKE AYERS, SR., ET AL.,
PLAINTIFFS
UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR

VS. CIVIL ACTION NO. GC 75-9-NB

WILLIAM ALLAIN, ET AL.,
DEFENDANTS

DEPOSITION OF ROBERT A. BAIN

APPEARANCES:

HONORABLE ZITA JOHNSON-BETTS
Civil Rights Division
United States Department of Justice
10th and Constitutional Avenue., N.W.
Washington, DC 20530
REPRESENTING THE PLAINTIFF-INTERVENOR

HONORABLE PAUL STEPHENSON
Watkins & Eager
Post Office Box 650
Jackson, Mississippi 39205
REPRESENTING THE DEFENDANTS

DEPOSITION TAKEN AT THE INSTANCE
OF THE PLAINTIFF-INTERVENOR
AT THE UNITED STATES ATTORNEY GENERAL'S OFFICE
JACKSON, MISSISSIPPI
ON THE 21st DAY OF NOVEMBER, 1986
COMMENCING AT 9:45 A.M.

REPORTED BY: BARBARA T. BROCK
Court Reporter and Notary Public

WINSTEAD & ASSOCIATES
Post Office Box 5353
Jackson, Mississippi 39216
(601) 981-4029

USX 967 (excerpts)

Q. Can you determine, Mr. Bain, whether this Exhibit No. 1 is a part of the current school catalog?

A. Not from -- no, because the school catalog has been in that form pretty much down through the years; and without anything on it saying that that's the '86-87 school catalog, I could not say positively that that is.

Q. Would the high school course requirements have been included in earlier school catalogs?

A. Yes. We had to inform those students that those course requirements would be in effect in '86.

Q. Thank you. I have no other questioning regarding Exhibit No. 1.

When the recruiters make visits, recruitment visits to high schools, would they inform students of the availability of the exemption to the minimum ACT score required for admission to your institution?

A. Because we are limited on the number of exemptions that we have, that is not an important part of our recruiting efforts. If we told students of all the exceptions that were available, all the deferral policies, all the exemption policies, we wouldn't have time to do anything else. So many times they are not told.

If there is a question by someone who asks, "Can I get in with less than a 15?" Yes. They are aware of the policy. They are involved in picking the students. They

know the policy; and they tell the student, "Yes, this is what you can do. And we will evaluate your record in April and be able to tell you early enough so that if you do not get in, then you can look for another channel to enter Delta State." There are also other channels by which they can be accepted to Delta State and have access to Delta State.

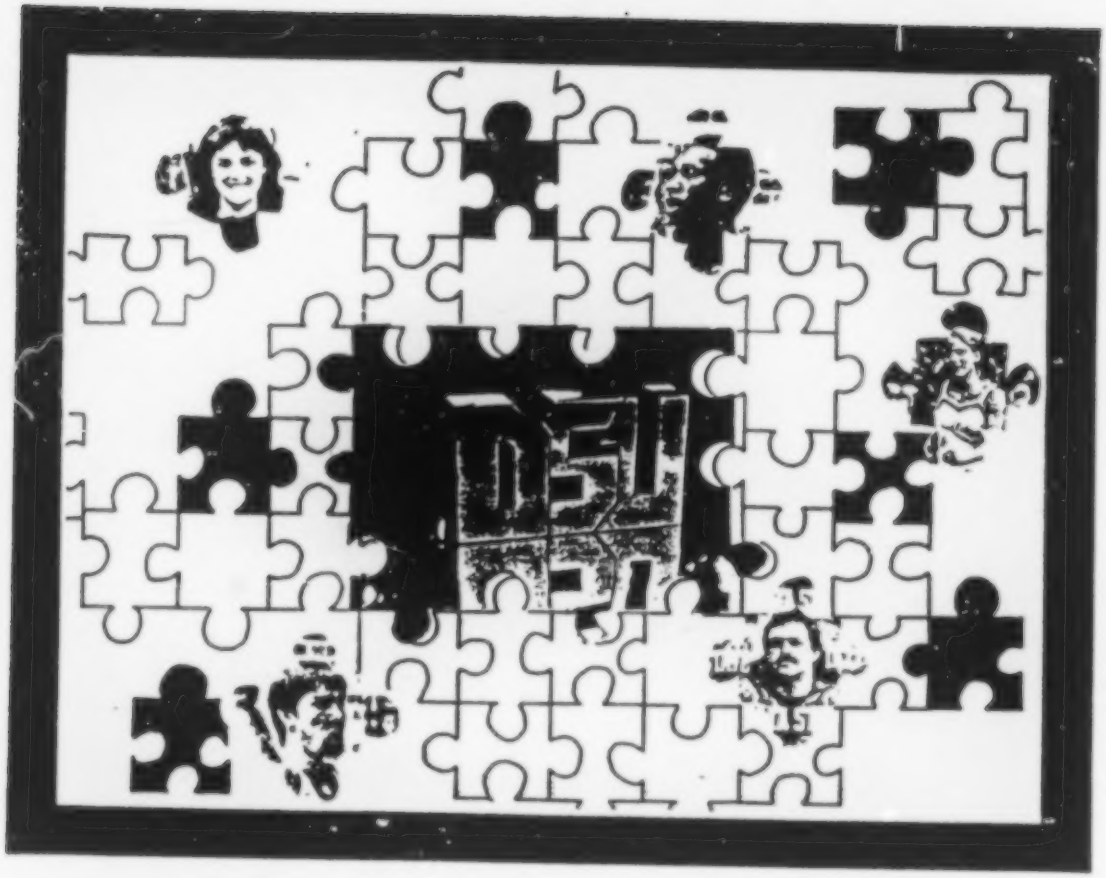
Q. You're referring to channels other than admission as a freshman student?

A. Right. Right.

Q. Is a student admitted under the exemption to the minimum ACT score requirement for admission accorded the same status as a student admitted with the required ACT score?

A. Exactly the same status. No distinction made other than he's told that he is being admitted as one of these students, a special admission student. And we ask him to sign a form and send it back to us telling us that he does plan to attend Delta State because since we have a quota, if we admit a student with less than a 15 and he decides not to come, we want to know it because if he doesn't come, then we can admit another one.

Q. Is there any effort made by your institution to follow the progress of students admitted with less than the ACT minimum score once admitted to your institution?



Delta State University

Bd - 132
(excerpts)

Admission Requirements

HIGH SCHOOL COURSE REQUIREMENTS

Beginning with the fall term of 1986, all entering freshmen students must have earned the following high school units in grades 9-12:

Subject	Units	
English	4	- All must require substantial writing components.
Mathematics	3	- Algebra I, Geometry, and Algebra II.
Sciences	3	- Choose from Biology, Advanced Biology, Chemistry, Advanced Chemistry, Physics, and Advanced Physics. One of those chosen must be laboratory based.
Social Sciences	2½	- Must include United States History and American Government.
Required Elective	1	- Choose from a foreign language or mathematics (above Algebra II) or a science (chosen from the science courses shown above).

It is also recommended that students pursue two units of foreign languages, take a mathematics course during their senior year, take a computer science course, and gain a level of typing proficiency.

Any student with an ACT assessment composite score of 24 or above is exempt from the high school units requirement.

Any student with less than the composite score of 24 who has a deficiency in the required high school units may be exempt from an area of deficiency by having an ACT assessment subtest score of at least 18 on the appropriate subtest. This option is not available for any student with more than one deficiency.

Any student who has a deficiency or deficiencies in the required high school units and who does not meet the exemption criteria shown above must attend an accredited institution of higher learning other than those under the governance of the Board of Trustees and must attain a "C" average (2.0 GPA on a 4.0 scale) in the following 24 semester credit hours:

6 Semester Hours	English Composition
3 Semester Hours	College Algebra or above
6 Semester Hours	Laboratory Science
9 Semester Hours	Transferable Electives

REQUIREMENTS FOR TRANSFERS

A student who was eligible for admission to the freshman class at Delta State but chose to attend another institution may transfer at any time as long as the student has a "C" average or better and is eligible to return to that institution.

Any student who was *not* eligible for admission to the freshman class must attend an accredited institution of higher learning other than one of Mississippi's eight state supported universities and attain a "C" average (2.0 G.P.A. on a 4.0 scale) in the following 24 semester credit hours.

6 semester hours	English Composition
3 semester hours	College Algebra or above
6 semester hours	Laboratory Science
9 semester hours	Transferable Electives

ACT REQUIREMENT

A minimum of a fifteen (15) composite score on the ACT is required.

Out-of-state students enrolling as first-time entering freshmen must present a minimum Composite ACT score of 15 or a Scholastic Aptitude Test (SAT) score of 720.

DEVELOPMENTAL COURSE REQUIREMENTS

Students who score below twelve (12) on the English portion of the ACT (300 SAT verbal) and/or twelve (12) on the mathematics portion of the ACT (350 SAT quantitative) must enter and satisfactorily complete a Board of Trustees approved developmental program in the area(s) of deficiency.

IMMUNIZATION REQUIREMENTS

All students (including transfers) entering Delta State for the first time and enrolling for academic credit must document proof of immunization for measles and rubella.

a. Proof of immunization may be documented in the following manner:
   (1) Documentation (month and year) of immunization which was received after the first birthday;
   (2) Positive measles and rubella serology titer with date;
   (3) Physician-documented history of having had measles with date of the disease. History of rubella is not acceptable.

b. Temporary exceptions - one semester:
   (1) Pregnant women;
   (2) Women suspecting pregnancy;
   (3) Women anticipating pregnancy within three months.

c. Permanent exception:
   (1) Medical disease which will cause a permanent contraindication to immunization;
   (2) All persons born prior to 1957.

For further information write to:

Office of Admissions
P. O. Box 3151 DSU
Cleveland, MS 38733
Phone: 1-800-GO TO DSU

Minority students at Ole Miss are involved in the total educational experience; we want you to join the growing ranks of minority graduates who have found that a degree from Ole Miss makes a difference.

Bd - 144 (excerpts)

Alpha Phi Alpha (ΑΦΑ)

Alpha Phi Alpha was founded at Cornell University in 1906. In the spring of 1978, The University of Mississippi welcomed Alpha Phi Alpha to its campus. Proudly wearing the colors black and gold, its members have proved themselves active in all phases of campus life.

Kappa Alpha Psi (ΚΑΨ)

Founded January 5, 1911, at the University of Indiana, Kappa Alpha Psi is the newest fraternity on campus, established in September of 1982. Kappa men have involved themselves in many campus and community activities. They are especially proud of the number of members associated with the Rebel athletic programs.

Omega Psi Phi (ΩΨΦ)

The Eta Zeta Chapter of Omega Psi Phi is a fraternity boasting men involved in all aspects of The University of Mississippi. In community activities and in campus life, in athletics and organizations, the Omega Psi Phis are there exemplifying ideals of leadership and brotherhood.

Phi Beta Sigma (ΦΒΣ)

Phi Beta Sigma, the social fraternity known for serving humanity, was founded January 9, 1914, at Howard University, and made its way to Ole Miss in the spring of 1975. In any facet of campus life, a Phi Beta Sigma can be depended on for duty.

Various programs are sponsored or cosponsored by the BSU, including a Speaker's Forum. In the past, a number of nationally known Black leaders have appeared on the Ole Miss campus including:

Dr. Emmit Burns, local and national civil rights activist
Charles Evers, former mayor of Fayette, Mississippi
Ismail Jamal, founder and director of the Institute of Self-Healing
James Meredith, civil rights activist
Haki Madhubute (formerly Don Lee), poet, writer, publisher and community activist
Dr. Conrad Worrill of Chicago, Illinois, who discussed "The Black Liberation Movement and Implications for Organizing in the 80s"
Dr. Margaret Walker Alexander, distinguished novelist and educator who was the keynote speaker during the 20th Anniversary program of the Admission of Black Students to the University
Yvonne Braithwaite-Burke, attorney-at-law and former member of United States Congress
Wendell Gunn, assistant director for commerce and trade in the Office of Policy Development in the Reagan Administration
Alex Haley, author, historian and lecturer who is world renowned for *Roots*
Constance Baker Motley, chief judge, United States District Court, Southern District of New York
A. Leon Higginbotham Jr., judge, United States Circuit Court of Appeals for the Third Circuit
Alan Page, attorney and former Chicago Bears star
Leontyne Price, internationally acclaimed operatic superstar who became the University's first honorary alumna during the centennial observance of the admission of women to Ole Miss

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There are a number of Black faculty and staff members at the University, all of whom are willing to help you with any special problems that may arise. We're sure you'll find all the faculty and staff willing to advise and counsel you on academic matters and to provide support when you need it.

HIGHLIGHTS OF THE ACT TECHNICAL REPORT

Introduction

The American College Testing Program is an independent and nonprofit national educational organization. A primary function of the organization is the transmission of information to students, high schools, and colleges during the students' transition from high schdol to college. This is accomplished largely through the ACT Assessment Program and its central instrument, the ACT Assessment, which includes a Student Profile Section plus a battery of four tests of educational development: English Usage, Mathematics Usage, Social Studies Reading, and Natural Sciences Reading. The ACT Assessment Program is used each year by approximately one million students and over 20,000 educational institutions.

Many different uses of the ACT Assessment Program are discussed and evaluated in depth in *Assessing Students on the Way to College: Technical Report for the ACT Assessment Program.*[1] That volume includes considerable empirical research about the effectiveness of the parts of the ACT Assessment for various educational uses. This booklet, which is composed of highlights from that larger volume, includes brief information on (1) the uses of standardized information, (2) the description of the ACT Assessment Program, (3) reliability and validity of information collected through the ACT Assessment, and (4) the fairness of uses of ACT as well as other educational assessment information.

Some Uses of Standardized Information

A broad range of information is collected through administration of the ACT Assessment for use as students cross the bridge from secondary school into the expanding and increasingly complex field of higher education. Among the most important areas within that broad range of information is the assessment of general educational development which is reported on a nationally standardized basis. Because measurement of academic achievement yields data for making many important educational decisions,

[1] Volume One of a 2-volume set entitled *Assessing Students on the Way to College.* The 2-volume set may be purchased for $6.00 by writing to ACT Publications, P.O. Box 168, Iowa City, Iowa 52240.

Introduction

The American College Testing Program (ACT) is a nonprofit educational service organization that provides a wide variety of services in such areas as testing, financial needs analysis, information processing, and research to the education community.

From its beginning, ACT has been convinced that testing and other ways of gathering, processing, and disseminating information have great potential for enhancing the educational process. We have been equally sensitive to the responsibilities imposed on us by our involvement in the lives of students and institutions.

In administering more than 50 educational programs and services, ACT operates within a framework of policies and procedures designed to guarantee maximum service to users and to protect their rights. These policies and procedures were recently subjected to a comprehensive review that drew on surveys of users, consultation with experts, and the expertise of ACT's own staff. The year-long study led to refinements in ACT's comprehensive three-part policy that covers responsible uses of test scores and other data, privacy of data, and the responsibilities of those who provide and use ACT's programs and services.

We believe it is important for students, educators, and others concerned about education to understand the premises on which our programs and services are based. This booklet contains statements of the policies that guide ACT in the planning and operation of our programs and services.

In the statements in this booklet, "program participants" refers to students; "program users" refers either to individuals or to educational institutions.

June 1979

2 *Guidelines for Institutions*

a Colleges and high schools that use ACT data for counseling purposes should employ a counseling staff fully trained in the uses and limitations of such data. These individuals should be prepared to interpret test scores and other information to students in terms that are understandable to the students and that accurately convey the legitimate meaning and the limitations of the data.

b Colleges and high schools should inform students and parents of the uses of ACT data, possibly in conjunction with other data, to help students plan educational experiences (both academic and nonacademic) responsive to their needs and interests.

B Selection and/or Entrance

1 *Responsibilities of ACT*

a ACT assists colleges in the proper use of ACT information for selection or admission decisions by providing appropriate guidelines for such uses through workshops conducted by the ACT staff and through various user publications.

b ACT assists colleges in studying the effects of various admission/selection decision rules for subgroups of the applicant population (e.g., male/female, adult, minority) by providing normative data for pertinent subgroups.

c ACT test score data should not be used as the sole criterion for admission/selection decisions. ACT encourages colleges to consider other measures of academic ability (e.g., high school grades or rank in class), as well as various noncognitive factors (e.g., interests, special skills, experiences) in the admission/selection decision.

d Regardless of the selection procedures used by colleges, those procedures should be systematically validated by the colleges. ACT helps colleges to conduct such validity studies on a regular basis through its Standard and Basic Research Services.

e ACT ensures the privacy of the students involved in the selection process by releasing data only to schools/personnel identified by the examinees as legitimate recipients of the data.

2 *Guidelines for Institutions*

a Colleges should maintain a qualified admission staff whose members are trained and experienced in the proper use of test information for selection purposes.

b Colleges should maintain the confidentiality of student information provided to them by ACT.

BOARD OF TRUSTEES OF STATE
INSTITUTIONS OF HIGHER LEARNING

DISTRIBUTION OF SCORES BY FREQUENCY
OF STANDARD SCORES BY INSTITUTION, ENTERING FRESHMEN

MISSISSIPPI UNIVERSITY FOR WOMEN

COMPOSITE

STANDARD SCORE	82-83	83-84	84-85	85-86	86-87	TOTAL
36	0	0	0	0	0	0
35	0	0	0	0	0	0
34	0	0	1	0	0	1
33	0	1	0	0	1	1
32	0	0	1	2	1	4
31	4	5	2	1	4	12
30	3	5	5	3	4	20
29	5	4	6	4	6	25
28	4	8	6	6	7	31
27	10	7	8	12	9	46
26	11	7	9	8	15	50
25	11	17	11	9	10	58
24	6	12	10	9	13	50
23	17	16	7	12	6	58
22	14	14	18	20	15	81
21	14	18	18	19	12	81
20	14	24	9	15	14	76
19	13	17	24	25	13	92
18	21	22	24	18	14	99
17	26	27	23	30	21	127
16	19	38	29	19	8	113
15	0	0	0	0	0	0
14	0	0	0	0	0	0
13	0	0	0	0	0	0
12	0	0	0	0	0	0
11	0	0	0	0	0	0
10	0	0	0	0	0	0
9	0	0	0	0	0	0
8	0	0	0	0	0	0
7	0	0	0	0	0	0
6	0	0	0	0	0	0
5	0	0	0	0	0	0
4	0	0	0	0	0	0
3	0	0	0	0	0	0
2	0	0	0	0	0	0
1	0	0	0	0	0	0
TOTAL	192	242	211	212	168	1025
MEAN	20.30	20.00	20.06	20.08	21.03	20.25

fifty percent difference in favor of white students, and the 1986 difference was just about fifteen hundred dollars.

Q. Dr. Leslie, did you analyze the Mississippi higher education funding formula?

A. I did.

Q. And what were your findings relative to that analysis?

A. I did.

Q. And what were your findings relative to that analysis?

A. Well, the primary test that I employed in examining the formula by which Mississippi allocates its resources across the eight universities is the extent to which an equitable distribution of those resources results.

Now, since the information we have already looked at comes from the financial reports, the examinatin of the formula is a means of allocating the State's appropriation or a good part of it, and that -- those figures are represented in the financial reports, which we have already looked at closely.

Now, I do have some general observations, however, about the formula. I shoudl say first of all that formulas are by their nature conservative documents. They are promoters of the status quo, and the reason is that they are driven by, that is, they are based upon historical funding patterns.

In other words, formulas distribute resources on the basis of how those resources were distributed in the past.

That is essentially how they work.

To give you an example of how a formula works, just taking one department, this is a common approach that is used in formulas. It may or may not fit the specific case of Mississippi, but formulas essentially all work in the same way.

The common approach for a Physics Department would be to, say, take the departmental budget for a given year, divide that budget by the number of student credit hours that are produced during the year by the department.

This then becomes the so-called cost per student credit hour in physics. That number, then, or that number in combination with other units of physics might be joined together such as physical sciences, becomes either direct or indirectly the weight or element in the formula that when combined across all units of the university, when multiplied through by the number of student credit hours generated, becomes the institution's allocation from the formula.

Again, the point of this is that the amounts in the formula, the weights, the elements, the factors come from the historical distribution of resources in the past.

There may be differences from State to State. In fact, probably all states that have formulas, about half of the states do, they probably all differ but they all work on that same common base.

It seems to me that it is improtant to note that the

formula is responsible for many of the recent and past inequalities that I have already talked about that exist -- that have existed historically when we compare the predominantly black versus the predominantly white institutions.

The -- these past inequities will not be eliminated by our formula that perpetuates the status quo, and it does not compensate in some way for the past inequitable treatment.

The quality of the faculty, the facilities, the curriculum, the students, the quality of the students today is the product of past as well as present formulas in previous financing budgets.

The Mississippi formula, by its very design cannot eliminate effects of past without major changes in its fundamental nature.

MR. STEPHENSON: Your Honor, I move to strike. He has not said a word other than he knows Mississippi has a formula. He has not identified the components.

He stated in the example that he used that it may or may not fit Mississippi.

THE COURT: Overruled.

BY MR. MARSHALL:

Q. Dr. Leslie, taking into consideration the entire analysis of some of the comparisons that you have made in this task, what opinions have you formed relative to the financing patterns in the State of Mississippi in its institutions of

higher education?

A. My general conclusion would be that overall both white students and traditionally white universities are in a favorable financial position when compared with black students and traditionally black institutions.

Although the gap narrowed between 1955 or 1960 and 1980, thereafter the gaps expanded so that conservative estimates are that expenditures on black students in Mississippi lagged considerably behind spending on white students.

This is true overall for total education and general expenditures, for instruction, for categories impacting directly on students and those impacting indirectly on students.

The discrepancies in my judgment are understood and interpreted most clearly, however, when financing of traditionally black and traditionally white institutions are examined.

The results do not vary greatly from those of the students because students tend to be enrolled along racial lines into institutions, especially the white students.

Usually per student income and expenditure figures in the predominantly black institutions trail those in the predominantly white institutions and usually the differences are major.

Yet, these differences, as important as they are, understate the true financial disparities between these institutions. Historically, predominantly white institutions

have been better financed, and these differences are cumulative. The historical funding inequities manifest themselves in essentially all institutional aspects. The faculty quality --

MR. STEPHENSON: Objection, Your Honor. He is not qualified, nor has he made any examination of any institutional aspect other than finance. He cannot express any opinion with respect to the alleged relative quality of faculty, students, programs or any other attribute of higher education.

THE COURT: Read that last answer back to me, please.

(Whereupon, the answer was read.)

THE COURT: The objection will be overruled. The Court has given this consideration only for the financial opinions that he has expressed.

All right. You may continue.

THE WITNESS: These financial inequities become important in examining the faculty that is recruited by institutions paying smaller salaries, by the quality of the programs that those fewer dollars are able to establish, by the fewer graduate level programs that those dollars permit, and then by a difference in the quality of the students, the number of students who will be attracted by faculty of a lower quality as determined by the financial resources.

Fewer resources also mean fewer opportunities for research, for graduate assistance and equipment, and such considerations are paramount to faculty as they take academic

employment.

Altogether, these factors mean a lower status, lower quality institution, and these conditions combine to attract less eminent and qualified faculty and students.

The seriousness of the discrepancies in Mississippi are appreciated most fully when one considers the cumulative effects of under-financing over time, and here additional insight is gained when total income and expenditures are considered too.

A discrepancy of a few dollars in spending per student may have little effect on a single year, but if this discrepancy continues year after year, sometimes less and sometimes more, the basic fabric of the institution being disparitly treated begins to vary more and more. That is what finances do. This is why universities are almost incapable of changing their prestige or status, real or perceived, except over long periods of time.

A university develops its character and its image over decades and longer. It is extremely rare for an institution to undergo major change in as little as a decade. Where this does happen, usually there is a massive influx of funds.

In the early years I examined in my study of the State of Mississippi funding of the eight universities, the -- Mississippi made the decision necessary --

MR. STEPHENSON: Objection, Your Honor, speculation.

He has not investigated what decisions were made on the educational bases on which a decision might have been made.

THE COURT: Read back that last response.

(Whereupon, the last answer was read.)

THE COURT: Well, I assume that he had to make some investigation of some decision, the decision as to what amount was to be allocated to what uniersity. I don't know what decision he is talking about there.

Go ahead and complete your answer.

THE WITNESS: My statement is a reflection of the allocation of the resources to the eight institutions from the State, and my point was that in its allocation decisions, the State made financial decisions that allowed three predominantly white institutions from the State, and my point was that in its allocation decisions, the State made financial decisions that allowed three predominantly white institutions to approach or reach true university status, but because its institutions were segregated at the time and perhaps because black enrollment --

MR. STEPHENSON: I object. Your Honor, he is speculating now. He is saying "perhaps" and he is getting ready to make statements concerning the duality of the system and --

THE COURT: Objection is sustained.

MR. STEPHENSON: He is trying to get in a legal conslusion that he is not qualified to express.

THE COURT: I don't know what is going to do, but he is starting to speculate by that answer. Your objection will be sustained to that answer.

THE WITNESS: The financial resources made available to the predominantly black institutions were not adequate to develop those institutions financially in the way of the predominantly white institutions were developed.

As a final summary statement, then, equity in funding between white and black students in the State, between traditionally white and black institutions does not in my judgment exist in Mississippi.

The funding equity improved until 1980. After that date, disparities again grew to where there is an accumulated deficit due to long term financial disparities, and these disparities are important to students. This may be true of financial resources -- this must be true if financial resources -- this must be true if financial resources make any difference whatsoever.

Faculty are attracted to --

MR. STEPHENSON: Objection, Your Honor. He has made no faculty study as to why a faculty person has taken a job or been employed at any institution. He cannot comment with respect to why any faculty individual in the State of Mississippi took a job, kept a job, left or whatever, why he agreed to a certain salary.

THE COURT: All right. I will reserve ruling on that. Continue this last statement. You can start, read at, "Faculty are attracted...

THE WITNESS: Faculty are attracted to the predominantly black institutions by lower salaries, the promise of lower academic ranks, lower tenure rates. They are attracted by less research support, less opportunity to teach graduate students at lower level curricula. They are attracted finally by much poorer student capabilities as measured by ACT scores.

In sum, they arrive at lesser institutions that hold little promise for getting better under the present financial --

MR. STEPHENSON: I move to strike that, Your Honor.

THE COURT: Objection sustained. Now, as to why the faculty are attracted.

BY MR. MARSHALL:

Q. Have you completed your response?

A. I have.

Q. Dr. Leslie, during your testimony, you have referred repeatedly to tables and charts that have been identified as United States Exhibit 694 (a) through (r).

Were those tables prepared by you or under your direct supervision?

A. Yes, they were.

MR. MARSHALL: Your Honor, at this time the

Q. And would you tell me if you recall that this is his phraseology: Quote, "But the Board and its staff may need to evaluate a supplemental formula factor to provide special funding for those institutions that have to expend considerable effort and resources on remedial and developmental work for students not fully ready to handle regular collegiate course work."

A. Okay.

Q. That was his language?

A. Yes.

Q. The staff didn't include in its recommendation to the Board inclusion of this, did it?

A. No, we did not. In surveying other states within this region, we found that we were handling developmental in the same basic way as seventy-five percent of the other states.

Q. Okay. Have you ever discussed with Dr. Millett the way that developmental funding is handled in Ohio?

A. No, Sir.

Q. Does the funding formula include any factor relating to earlier patters of funding?

A. I'm not sure.

Q. Okay. Let me be more specific.

A. Okay.

Q. Does it include any factor based on the premise that earlier funding was not equitable to historically black institutions?

A. Not specifically in that manner, no.

Q. Do you still have Board 364 with you?

A. Yes. All right. Yes.

Q. The cost for credit hours shown for Valley under the column lower would be the cost during the 1979-1980 calendar year?

A. Yes.

Q. What accounts for the lower cost per hour at Valley as compared with Delta State University? Valley shows here thirty-four and eighty-eight cents and Delta state fifty-six dollars and sixty-one cents.

A. The major reason for that is institutional budgeting practics. Delta State University, as a philosophy of that university, puts anywhere from fifty-two to fifty-seven percent of all of its available resources into instruction, paying higher faculty salaries, keeping a low faculty-student ratio to the extent possible.

Mississippi Valley has dropped the amount that they put into instruction. Their high was forty-six percent. They dropped to a low in 1984-85, that time period, to a low of thirty-seven percent that they were spending in the instruction. This is going to cause their cost for credit hour to be very low.

Q. The group rate for the column from which I was just reading on Board 364 shows us fifty dollars and forty-seven cents. And

are slowly but surely bringing in a faculty which can do important and significant research, and we don't have the space for them. We need a continuing education center. We have many, many needs.

Q. Dr. Lucas, as President of the University of Southern Mississippi, are you aware or do you become aware of particular accomplishments or recognitions of your individual faculty or employees?

A. Yes.

Q. Could you describe to the Court just a few, if there are any, accomplishments or special recognition of your black faculty employees?

A. Yes. We just recently learned that Professor Skip Norman in Radio, Television and Film, who is an expert in the history of film has been awarded a very prestigious Fullbright award to study abroad this next year.

Professor Smith in dietetics is Chairman of the Scholarship and Awards Committee of the American Dietetics Association, and as Chair of that Committee, he is responsible for awarding each year over a quarter of a million dollars in scholarships and awards.

Dean Shirley Jones, who came to us as Dean of our School of Social Work from State University of New York, Stoney Brook, has a national reputation as a superb social work administrator. She has received national awards

and is now serving as a member of the Council on Accreditation of Social Work Education, which accredits social work programs in the United States.

Q. Can I interrupt.

Did you say Dean Shirley Jones?

A. That's right.

Q. Is she an academic dean?

A. Yes, Dean of our School of Social Work. She is a tenured professor.

Q. All right.

A. Professor Larry LeFlore in criminal justice. He has just recently completed his dissertation under our faculty development program, whereby we use our-- some of our compliance monies to help him with his graduate work, and he is establishing a national reputation in the area of Juvenile Justice and History of Criminal Systems.

His publishing is immensely significant. He is one of those that though he is an assistant professor, his salary for this next year will be better than many associate professors in the university.

Professor Hompton Williams, who is a Professor of Education Administration, edits the "Journal of Educational Psychology." This is a nationally juried journal where professionals from throughout America read the articles which are submitted and determine whether or not they ought

then and I think that's the case now; that if we admit them below 15, we do not place them on probation.

Q. Do you think that placing them on probation would be an extra pressure that would make it more difficult for them to succeed?

A. I think it probably could be. But the reverse would also be true, that perhaps it would indicate or alert them to the fact that they are going to have to be diligent in their work.

Q. Do you consider that having black staff is important to the ability to recruit black students to your campus?

A. Yes.

Q. Is the policy or practice that when a person has been president of one of the eight universities and leaves the position of president and then becomes a faculty member at one of the universities that that person gets the status of distinguished professor?

A. That is my understanding, if he's been there for ten years.

Q. Been where?

A. In the position.

Q. Of president?

A. Yes.

Q. Was Dr. Boykins in the position of President for ten years?

There was also a field which indicated when they planned to attend college.

A third field which I used was the--They are asked to give preferences as to what schools they would like their ACT's to be sent to. Preferences to where they would like to go to school and where they would like their ACT sent. I was given information for those schools. If one of their or any of their preferences were any of the eight public universities in Mississippi, they were placed on the tape, so that I knew who preferred and in which order in the eight schools, if they preferred any.

From this data, I did the following to create my qualified pools:

The first thing I did was merge all of the tapes together and got rid of the duplicative people. A lot of people take it in their junior year and again in their senior year. So, I dealt with a single record for each individual, coded to the time they expected to enter college. Everybody that planned to enter in 1985, the fall of 1985.

If the person took the test in the previous year as a junior and not a senior, I would use that record. If he took it both as a junior and senior, I would then use that record that--I would take the highest ACT test score, whatever the highest was, which is the standard used by most universities. That gave me my base data to start with.

Then I eliminated from the pool those that said their highest

white interests given there in the qualified pool for any of the predominantly white institutions.

This study, I am focusing now on what they actually asked for, what they actually had a preference for, and now I am defining who in that group, of course, indicated a preference for a predominantly white institution in the State of Mississippi, and that preference would be their first preference in terms of a State institution.

So, for instance, if somebody said, I want to go to Mississippi State first, Jackson State second, they would be in the study. If somebody said, I want to go to Duke first, UNC second, University of Mississippi, their, they would be in this study.

Okay. The first school they indicated was the University of Mississippi. If somebody said Duke, eorth Carolina and that is it, they would not be in the study. If somebody indicated that their first preference was Jackson State, they would not be in this study. If somebody indicated three junior colleges, they would not be in this study. Okay.

Q. When, sir, was the preference indicated by the student?

A. Preference is indicated by the student when he signs up to take the ACT test. It is before he takes the test. It is on the form he fills out is my understanding.

Q. Okay.

A. To take the test.

Q. Sir, so it is clear, what is your data source for Board 194, please, sir?

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mi·lieu (mē-lyœ′) *n.* Environment or surroundings. [French, environment, midst, from Old French, midst, center : *mi*, middle, from Latin *medius* (see **medhyo-** in Appendix*) + *lieu*, place, from Latin *locus*, place, LOCUS.]

832

1984

Degrees Earned

A. Bachelor of Science	Number Earned	Black	White
1. Accounting	8	8	0
2. Agricultural Economics	7	7	0
3. Agricultural Education	15	15	0
4. Agronomy	4	4	0
5. Animal Science	4	4	0
6. Biology	7	7	0
7. Business Administration	52	52	0
8. Business Education	3	3	0
9. Chemistry	14	14	0
10. Computer Science and Applied Mathematics	11	11	0
11. Early Childhood Education	5	5	0
12. Educational Psychology	5	5	0
13. Elementary Education	18	18	0
14. Foods and Nutrition	1	1	0
15. General Home Economics	1	1	0
16. Health & Physical Education	10	10	0
17. Health Science	12	12	0
18. Home Economics Education	4	4	0
19. Industrial Arts Education	2	2	0
20. Industrial Technology	3	3	0
21. Mathematics	4	4	0
22. Recreation	7	7	0

		Number Earned	Black	White
23.	Secretarial Science	13	13	0
24.	Special Education	9	9	0
25.	Technical Education	15	15	0
B.	Bachelor of Music Education			
26.	Music	2	2	0
C.	Bachelor of Arts			
27.	Economics	3	3	0
28.	English	19	19	0
29.	History	4	4	0
30.	Political Science	10	10	0
31.	Social Science Education	1	1	0
32.	Sociology and Social Services	17	17	0
D.	Bachelor of Science in Nursing			
33.	Nursing	6	5	1
E.	Associate of Science in Nursing			
34.	Nursing	18	3	15
F.	Master of Science in Agriculture			
35.	Agriculture	6	6	0
G.	Master of Science in Education			
36.	Elementary Education	6	6	0
37.	Secondary Education	19	17	2

H. Total Number of Baccalaureate Deegrees Earned - 314

Total Number of Associate of Science Degrees Earned - 18

Total Number of Master of Science Degrees Earned - 31

Total Number of Degrees Earned for 1984 - 345

I. a) Number and Percent of Degrees Earned by Black Students - 327 - 94.8%

b) Number and Percent of Degrees Earned by White Students - 18 - 5.2%

DEGREES EARNED BY BLACK AND WHITE STUDENTS
AT JACKSON STATE UNIVERSITY
1981-82 TO 1985-86

Race and Percentage Categories	Academic Year				
	1981-82	1982-83	1983-84	1984-85	1985-86
Undergraduate	Not	801	Not	630	Not
Black	Available	752	Avialable	608	Available
Percentage Black		93.9		96.6	
White		9		19	
Percentage White		1.1		3.0	
Graduate	Not	249	Not	268	Not
Black	Available	201	Available	219	Available
Percentage Black		80.7		81.7	
White		16		23	
Percentage White		6.4		8.6	
Professional	Not Applicable—Degrees in law, medicine, and engineering are not offered.				
Black					
Percentage Black					
White					
Percentage White					

Note: Foreign students are not included in the data.

V-69 DEGREES AWARDED

Program	1981-82		1982-83		1983-84		1984-85		1985-86	
*Bachelor's	B	W	B	W	B	W	B	W	B	W
	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )
Accounting	10(100)		8(100)		6(100)		8(100)		4(100)	
Business Admin.	30(100)		22(100)		38(100)		35(100)		38(100)	
Office Admin.	5(100		3(100)		2(100		1(100)		5(100)	
Computer Science	19(100)		15(100)		18(100)		25(100)		33(100)	
Elementary Education	48(100)		41(100)		24(100)		15(100)		13(100)	
Art Education			1(100)							
Business Education	1(100)		2(100)		2(100)		2(100)		1(100	
Ind. Arts Education	10(100)		1(100)		1(100)				1(100)	
Music Education	4(100)		4(100)		4(100)		6(100)		1(100)	
Physical Education	19(100)		22(100)		13(100)		10(100)		16(100)	
Voc. Ind. Education			4(100)		3(100)		1(100)		1(100)	
Environmental Hlth.	4(100)		5(100)		4(100)		2(100)		5(100)	
Industrial Technology	9(100)		13(100)		23(100)		24(100)		28(100)	
English	1(100)		3(100)		7(100)		2(100)		2(100)	
Speech	13(100)		9(100)		8(100)		5(100)		4(100)	
Biology	13(100)		16(100)		11(100)		14(100)		7(100)	

MVSU

V-69 DEGREES AWARDED

Program	1981-82		1982-83		1983-84		1984-85		1985-86	
*Bachelor's (cont.)	B	W	B	W	B	W	B	W	B	W
	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )
Mathematics	5(100)		4(100)		4(100)		1(100)		1(100)	
Chemistry			2(100)		3(100)		3(100)			
Physics	3(100)						2(100)			
Criminal Justice	49(100)		21(100)		19(100)		49(100)		41(100)	
Soc. Gerontology			1(100)		1(100)				2(100)	
Social Work			11(100)		21(100)		23(100)		17(100)	
Social Science	4(100)		3(100)		2(100)		3(100)			
History	3(100)		3(100)		4(100)		1(100)		2(100)	
Political Science	14(100)		8(100)		11(100)		6(100)		10(100)	
Sociology	3(100)		6(99)	1 (1)	9(100)		8(100)		9(100)	
Science Education	2(100)									
Art	5(100)		1(100)		2(100)		5(100)			
Music	1(100)		1(100)		2(100)		3(100)		1(100)	
Community Services	38(100)									
German					1(100)					

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V-69 DEGREES AWARDED

Program	1981-82		1982-83		1983-84		1984-85		1985-86	
Master's	B	W	B	W	B	W	B	W	B	W
	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )	N ( )
Elementary Education	33(100)		33(100)		19(99)	1(1)	24(100)		22(100)	
Environmental Hlth.	5(100)		3(100)		1(100)		1(100)		3(100)	

DSU

Discipline	BACHELORS # Black Degrees Awarded	BACHELORS # White Degrees Awarded	MASTERS # Black Degrees Awarded	MASTERS # White Degrees Awarded
1984-85				
(NCES)				
04 Architecture	0	3	-	-
06 Business Management	43	191	6	19
07 Business and Office	7	6	-	-
08 Marketing/Distribution	1	1	-	-
13 Education	9	109	36	71
16 Foreign Language	0	6	-	-
17 Allied Health	0	1	-	-
18 Health Sciences	7	27	-	-
19 Home Economics	0	0	-	-
23 Letters	0	5	0	2
25 Library Science	-	-	0	1
26 Biological Sciences	3	24	0	0
27 Mathematics	1	3	0	0
30 Interdisciplinary	0	3	-	-
40 Physical Science	1	8	-	-
42 Psychology	5	4	-	-
43 Protective Services	13	14	-	-
44 Public Affairs	4	4	-	-
45 Social Sciences	5	9	0	1
49 Transportation/Mtl Mov	1	6	-	-
50 Visual/Performing Arts	0	25	-	-
TOTAL DEGREES AWARDED:	100	449	42	94
% BLACK DEGREES:	18.21		30.88	
% WHITE DEGREES:		81.79		69.12

BLACKS AS A PERCENT OF TOTAL: 20.73
WHITES AS A PERCENT OF TOTAL: 79.27

EARNED DEGREES

1981	UNDERGRADUATE	1887	
	Black	77	
	White	1772	4% Black
	GRADUATE	724	92% White
	Black	30	
	White	642	
1982	UNDERGRADUATE	1937	
	Black	125	
	White	1740	6% Black
	GRADUATE	823	87% White
	Black	41	
	White	492	
1983	UNDERGRADUATE	1997	
	Black	89	
	White	1870	4% Black
	GRADUATE	664	91% White
	Black	26	
	White	555	
1984	UNDERGRADUATE	1888	
	Black	150	
	White	1689	8% Black
	GRADUATE	686	84% White
	Black	57	
	White	470	
1985	UNDERGRADUATE	1970	
	Black	140	
	White	1775	7% Black
	GRADUATE	701	85% White
	Black	56	
	White	495	

Ayers:b:intno69

MSY
69

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED: BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
	04. ARCHITECTURE AND ENVIRONMENTAL DESIGN						
04.0301	CITY/COMMUNITY/REG. PLANNING						
04.0501	INTERIOR DESIGN	2.00	4.00	2.00			
04.0000	TOTAL (SUM OF CODES 04.0101 - 04.9999)	2.00	4.00	2.00			
RACIAL/ETHNIC BREAKDOWN ******							
04.0000-1	NON-RESIDENT ALIEN						
04.0000-2	BLACK, NON-HISPANIC			1.00			
04.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
04.0000-4	ASIAN OR PACIFIC ISLANDER						
04.0000-5	HISPANIC						
04.0000-6	WHITE, NON-HISPANIC	2.00	4.00	1.00			
	06. BUSINESS AND MANAGEMENT						
06.0101	BUSINESS AND MANAGEMENT	114.00	61.00				
06.0201	ACCOUNTANCY	61.00	61.00	18.00	8.00	3.00	
06.0301	BANKING AND FINANCE	64.00	33.00				
06.0401	BUS. ADMIN. AND MANAGEMENT	27.00	14.00	22.00	1.00	1.00	1.00
06.0501	BUSINESS ECONOMICS	2.00	2.00	3.00	1.00	1.00	
06.0801	INSURANCE & RISK MANAGEMENT	6.00	2.00				
06.1401	MARKETING MANAGEMENT	63.00	62.00				
06.1701	REAL ESTATE, GENERAL	3.00					
06.0000	TOTAL (SUM OF CODES 06.0101 - 06.9999)	340.00	235.00	43.00	10.00	5.00	1.00
RACIAL/ETHNIC BREAKDOWN ******							
06.0000-1	NON-RESIDENT ALIEN	5.00	5.00	5.00		1.00	1.00
06.0000-2	BLACK, NON-HISPANIC	13.00	16.00				
06.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE		2.00				
06.0000-4	ASIAN OR PACIFIC ISLANDER	1.00					
06.0000-5	HISPANIC	321.00	212.00	38.00	10.00	4.00	
06.0000-6	WHITE, NON-HISPANIC						

PX 329(3) (excerpts)

UM

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
	07. BUSINESS AND OFFICE						
07.04C1	OFFICE SUPERVISION & MGMT.		9.00				
07.0602	COURT REPORTING		8.00				
07.0000	TOTAL (SUM OF CODES 07.0101 - 07.9999)		17.00				
	RACIAL/ETHNIC BREAKDOWN ******						
07.0000-1	NON-RESIDENT ALIEN						
07.0000-2	BLACK, NON-HISPANIC		2.00				
07.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
07.0000-4	ASIAN OR PACIFIC ISLANDER		1.00				
07.0000-5	HISPANIC						
07.0000-6	WHITE, NON-HISPANIC		14.00				
	09. COMMUNICATIONS						
09.04C1	JOURNALISM	17.00	24.00	1.00			
09.07C1	RADIO AND TELEVISION	7.00	12.00				
09.9999	COMMUNICATIONS, OTHER	5.00	6.00				
09.0000	TOTAL (SUM OF CODES 09.0101 - 09.9999)	29.00	42.00	1.00			
	RACIAL/ETHNIC BREAKDOWN ******						
09.0000-1	NON-RESIDENT ALIEN						
09.0000-2	BLACK, NON-HISPANIC	2.00	2.00				
09.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE	1.00					
09.0000-4	ASIAN OR PACIFIC ISLANDER						
09.0000-5	HISPANIC						
09.0000-6	WHITE, NON-HISPANIC	26.00	40.00	1.00			
	11. COMPUTER AND INFORMATION SCIENCES						
11.0101	COMP. & INFO. SCIENCES, GEN.	35.00	21.00				
11.0000	TOTAL (SUM OF CODES 11.0101 - 11.9999)	35.00	21.00				

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
RACIAL/ETHNIC BREAKDOWN *****							
11.0000-1	NON-RESIDENT ALIEN	5.00	1.00				
11.0000-2	BLACK, NON-HISPANIC	7.00	7.00				
11.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
11.0000-4	ASIAN OR PACIFIC ISLANDER						
11.0000-5	HISPANIC						
11.0000-6	WHITE, NON-HISPANIC	23.00	13.00				
	13. EDUCATION						
13.0101	EDUCATION, GENERAL					10.00	10.00
13.0401	EDUC. ADMINISTRATION, GEN.			2.00	3.00		
13.0406	HIGHER EDUCATION ADMIN.			1.00	4.00		
13.0501	EDUCATIONAL MEDIA				4.00		
13.0801	SCHOOL PSYCHOLOGY					10.00	1.00
13.1001	SPECIAL EDUCATION, GENERAL	1.00	24.00	1.00	12.00		
13.1101	STUDENT COUNSELING				1.00		
13.1202	ELEMENTARY EDUCATION	4.00	71.00	1.00	30.00		
13.1204	PRE-ELEMENTARY EDUCATION				4.00		
13.1205	SECONDARY EDUCATION	11.00	28.00		16.00		
13.1302	ART EDUCATION		3.00		1.00		
13.1303	BUSINESS EDUCATION		5.00		3.00		
13.1312	MUSIC EDUCATION				1.00		
13.1314	PHYSICAL EDUCATION	17.00	4.00	1.00	4.00		
13.1315	READING EDUCATION				4.00		
13.0000	TOTAL (SUM OF CODES 13.0101 - 13.9999)	33.00	135.00	6.00	87.00	20.00	11.00
RACIAL/ETHNIC BREAKDOWN *****							
13.0000-1	NON-RESIDENT ALIEN		2.00		2.00	1.00	
13.0000-2	BLACK, NON-HISPANIC	3.00	9.00	1.00	9.00	1.00	2.00
13.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
13.0000-4	ASIAN OR PACIFIC ISLANDER				1.00		
13.0000-5	HISPANIC						
13.0000-6	WHITE, NON-HISPANIC	30.00	124.00	5.00	75.00	18.00	9.00
	14. ENGINEERING						
14.0101	ENGINEERING,GENERAL	6.00	2.00				
14.0701	CHEMICAL ENGINEERING	11.00	4.00				

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
	14. ENGINEERING CONTINUED						
14.0801	CIVIL ENGINEERING	21.00	1.00				
14.1001	ELEC, ELTRNCS, & COMM ENGR.	18.00	1.00				
14.1301	ENGINEERING SCIENCE			35.00	8.00	3.00	
14.1501	GEOLOGICAL ENGINEERING	2.00	2.00				
14.1901	MECHANICAL ENGINEERING	24.00					
14.0000	TOTAL (SUM OF CODES 14.0101 - 14.9999)	82.00	10.00	35.00	8.00	3.00	
	RACIAL/ETHNIC BREAKDOWN ******						
14.0000-1	NON-RESIDENT ALIEN	20.00	1.00	23.00	2.00	1.00	
14.0000-2	BLACK, NON-HISPANIC						
14.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
14.0000-4	ASIAN OR PACIFIC ISLANDER	1.00					
14.0000-5	HISPANIC						
14.0000-6	WHITE, NON-HISPANIC	61.00	9.00	12.00	6.00	2.00	
	16. FOREIGN LANGUAGES						
16.0501	GERMAN	1.00			1.00		
16.0601	GREEK	1.00					
16.0901	FRENCH		2.00				
16.0905	SPANISH				1.00		
16.0000	TOTAL (SUM OF CODES 16.0101 - 16.9999)	2.00	2.00		2.00		
	RACIAL/ETHNIC BREAKDOWN ******						
16.0000-1	NON-RESIDENT ALIEN						
16.0000-2	BLACK, NON-HISPANIC						
16.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
16.0000-4	ASIAN OR PACIFIC ISLANDER						
16.0000-5	HISPANIC				1.00		
16.0000-6	WHITE, NON-HISPANIC	2.00	2.00		1.00		
	17. ALLIED HEALTH						
17.0310	MEDICAL TECHNOLOGY	1.00	6.00				
17.0000	TOTAL (SUM OF CODES 17.0101 - 17.9999)	1.00	6.00				

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES		MASTERS DEGREES		DOCTORS DEGREES	
		MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
RACIAL/ETHNIC BREAKDOWN ******							
17.0000-1	NON-RESIDENT ALIEN						
17.0000-2	BLACK, NON-HISPANIC						
17.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
17.0000-4	ASIAN OR PACIFIC ISLANDER						
17.0000-5	HISPANIC						
17.0000-6	WHITE, NON-HISPANIC	1.00	6.00				
	18. HEALTH SCIENCES						
18.0103	SPEECH PATHOLOGY/AUDIOLOGY	1.00	11.00		12.00		
18.0701	HEALTH CARE ADMINISTRATION			2.00	1.00	4.00	2.00
18.0799	HEALTH SCIENCES ADMIN.				1.00		
18.1401	PHARMACY	41.00	33.00	6.00	5.00		
18.0000	TOTAL (SUM OF CODES 18.0101 - 19.9999)	42.00	44.00	8.00	19.00	4.00	2.00
RACIAL/ETHNIC BREAKDOWN ******							
18.0000-1	NON-RESIDENT ALIEN	1.00		2.00	3.00	1.00	
18.0000-2	BLACK, NON-HISPANIC	1.00			2.00		
18.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE	1.00					
18.0000-4	ASIAN OR PACIFIC ISLANDER	1.00	1.00				
18.0000-5	HISPANIC				1.00		
18.0000-6	WHITE, NON-HISPANIC	38.00	43.00	6.00	13.00	3.00	2.00
	19. HOME ECONOMICS						
19.0101	HOME ECONOMICS, GENERAL	1.00	45.00		8.00		
19.0000	TOTAL (SUM OF CODES 19.0101 - 19.9999)	1.00	45.00		8.00		
RACIAL/ETHNIC BREAKDOWN ******							
19.0000-1	NON-RESIDENT ALIEN				1.00		
19.0000-2	BLACK, NON-HISPANIC		1.00		2.00		
19.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
19.0000-4	ASIAN OR PACIFIC ISLANDER		1.00				
19.0000-5	HISPANIC						
19.0000-6	WHITE, NON-HISPANIC	1.00	43.00		5.00		

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES		MASTERS DEGREES		DOCTORS DEGREES	
		MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
	23. LETTERS						
23.0101	ENGLISH, GENERAL	24.00	22.00	3.00	6.00	1.00	3.00
23.0000	TOTAL (SUM OF CODES 23.0101 - 23.9999)	24.00	22.00	3.00	6.00	1.00	3.00
RACIAL/ETHNIC BREAKDOWN ******							
23.0000-1	NON-RESIDENT ALIEN			1.00			
23.0000-2	BLACK, NON-HISPANIC	1.00	2.00				
23.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
23.0000-4	ASIAN OR PACIFIC ISLANDER						
23.0000-5	HISPANIC						
23.0000-6	WHITE, NON-HISPANIC	23.00	20.00	2.00	6.00	1.00	3.00
	24. LIBERAL/GENERAL STUDIES						
24.0101	LIBERAL/GENERAL STUDIES	1.00					
24.0000	TOTAL (SUM OF CODES 24.0101 - 24.9999)	1.00					
RACIAL/ETHNIC BREAKDOWN ******							
24.0000-1	NON-RESIDENT ALIEN						
24.0000-2	BLACK, NON-HISPANIC						
24.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
24.0000-4	ASIAN OR PACIFIC ISLANDER						
24.0000-5	HISPANIC						
24.0000-6	WHITE, NON-HISPANIC	1.00					
	25. LIBRARY AND ARCHIVAL SCIENCES						
25.0401	LIBRARY SCIENCE			2.00	4.00		
25.0000	TOTAL (SUM OF CODES 25.0101 - 25.9999)			2.00	4.00		

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES		MASTERS DEGREES		DOCTORS DEGREES	
		MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
RACIAL/ETHNIC BREAKDOWN ******							
25.0000-1	NON-RESIDENT ALIEN						
25.0000-2	BLACK, NON-HISPANIC						
25.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
25.0000-4	ASIAN OR PACIFIC ISLANDER						
25.0000-5	HISPANIC						
25.0000-6	WHITE, NON-HISPANIC			2.00	4.00		
	26. LIFE SCIENCES						
26.0101	BIOLOGY, GENERAL	31.00	15.00	1.00	1.00		1.00
26.0705	PHARMACOLOGY						1.00
26.9999	LIFE SCIENCES, OTHER	2.00					
26.0000	TOTAL (SUM OF CODES 26.0101 - 26.9999)	33.00	15.00	1.00	1.00		2.00
RACIAL/ETHNIC BREAKDOWN ******							
26.0000-1	NON-RESIDENT ALIEN						
26.0000-2	BLACK, NON-HISPANIC		1.00				
26.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
26.0000-4	ASIAN OR PACIFIC ISLANDER	1.00					
26.0000-5	HISPANIC						
26.0000-6	WHITE, NON-HISPANIC	32.00	14.00	1.00	1.00		2.00
	27. MATHEMATICS						
27.0101	MATHEMATICS, GENERAL	3.00	10.00	3.00	1.00		
27.0000	TOTAL (SUM OF CODES 27.0101 - 27.9999)	3.00	10.00	3.00	1.00		
RACIAL/ETHNIC BREAKDOWN ******							
27.0000-1	NON-RESIDENT ALIEN						
27.0000-2	BLACK, NON-HISPANIC						
27.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
27.0000-4	ASIAN OR PACIFIC ISLANDER						
27.0000-5	HISPANIC						
27.0000-6	WHITE, NON-HISPANIC	3.00	10.00	3.00	1.00		

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
	30. MULTI/INTERDISCIPLINARY STUDIES						
30.0101	BIOLOGICAL & PHYSICAL SCI.	2.00					
30.0000	TOTAL (SUM OF CODES 30.0101 - 30.9999)	2.00					
RACIAL/ETHNIC BREAKDOWN ******							
30.0000-1	NON-RESIDENT ALIEN						
30.0000-2	BLACK, NON-HISPANIC						
30.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
30.0000-4	ASIAN OR PACIFIC ISLANDER						
30.0000-5	HISPANIC						
30.0000-6	WHITE, NON-HISPANIC	2.00					
	31. PARKS AND RECREATION						
31.0101	PARKS AND RECREATION	5.00	4.00				
31.0301	PARKS AND RECREATION MGMT.				2.00		
31.0000	TOTAL (SUM OF CODES 31.0101 - 31.9999)	5.00	4.00		2.00		
RACIAL/ETHNIC BREAKDOWN ******							
31.0000-1	NON-RESIDENT ALIEN						
31.0000-2	BLACK, NON-HISPANIC						
31.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
31.0000-4	ASIAN OR PACIFIC ISLANDER						
31.0000-5	HISPANIC	1.00					
31.0000-6	WHITE, NON-HISPANIC	4.00	4.00		2.00		
	38. PHILOSOPHY AND RELIGION						
38.0101	PHILOSOPHY	2.00					
38.0000	TOTAL (SUM OF CODES 38.0101 - 38.9999)	2.00					

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES		MASTERS DEGREES		DOCTORS DEGREES	
		MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
RACIAL/ETHNIC BREAKDOWN ******							
38.0000-1	NON-RESIDENT ALIEN						
38.0000-2	BLACK, NON-HISPANIC	1.00					
38.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
38.0000-4	ASIAN OR PACIFIC ISLANDER						
38.0000-5	HISPANIC						
38.0000-6	WHITE, NON-HISPANIC	1.00					
	40. PHYSICAL SCIENCES						
40.0501	CHEMISTRY, GENERAL	10.00	3.00		2.00		
40.0601	GEOLOGY	7.00	3.00	3.00	2.00		
40.0699	GEOLOGICAL SCIENCES, OTHER	4.00					
40.0801	PHYSICS, GENERAL	12.00	4.00	5.00	1.00	4.00	
40.0000	TOTAL (SUM OF CODES 40.0101 - 40.9999)	33.00	10.00	8.00	5.00	4.00	
RACIAL/ETHNIC BREAKDOWN ******							
40.0000-1	NON-RESIDENT ALIEN					1.00	
40.0000-2	BLACK, NON-HISPANIC		2.00				
40.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
40.0000-4	ASIAN OR PACIFIC ISLANDER	1.00					
40.0000-5	HISPANIC						
40.0000-6	WHITE, NON-HISPANIC	32.00	8.00	8.00	5.00	3.00	
	42. PSYCHOLOGY						
42.0101	PSYCHOLOGY, GENERAL	15.00	15.00	1.00	2.00	3.00	4.00
42.0000	TOTAL (SUM OF CODES 42.0101 - 42.9999)	15.00	15.00	1.00	2.00	3.00	4.00
RACIAL/ETHNIC BREAKDOWN ******							
42.0000-1	NON-RESIDENT ALIEN						
42.0000-2	BLACK, NON-HISPANIC		2.00		1.00		
42.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
42.0000-4	ASIAN OR PACIFIC ISLANDER						
42.0000-5	HISPANIC						
42.0000-6	WHITE, NON-HISPANIC	15.00	13.00	1.00	1.00	3.00	4.00

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES MEN	BACHELORS DEGREES WOMEN	MASTERS DEGREES MEN	MASTERS DEGREES WOMEN	DOCTORS DEGREES MEN	DOCTORS DEGREES WOMEN
	43. PROTECTIVE SERVICES						
43.0103	CRIMINAL JUSTICE ADMIN.	19.00	11.00	4.00			
43.0106	FORENSIC STUDIES	1.00					
43.0107	LAW ENFORCEMENT		1.00				
43.0000	TOTAL (SUM OF CODES 43.0101 - 43.9999)	20.00	12.00	4.00			
RACIAL/ETHNIC BREAKDOWN ******							
43.0000-1	NON-RESIDENT ALIEN						
43.0000-2	BLACK, NON-HISPANIC	2.00	2.00				
43.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
43.0000-4	ASIAN OR PACIFIC ISLANDER						
43.0000-5	HISPANIC						
43.0000-6	WHITE, NON-HISPANIC	18.00	10.00	4.00			
	44. PUBLIC AFFAIRS						
44.0201	COMMUNITY SERVICES				2.00		
44.0401	PUBLIC ADMINISTRATION	15.00	7.00	3.00	1.00		
44.0701	SOCIAL WORK, GENERAL	4.00	22.00				
44.0000	TOTAL (SUM OF CODES 44.0101 - 44.9999)	19.00	29.00	3.00	3.00		
RACIAL/ETHNIC BREAKDOWN ******							
44.0000-1	NON-RESIDENT ALIEN						
44.0000-2	BLACK, NON-HISPANIC	1.00	3.00		1.00		
44.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
44.0000-4	ASIAN OR PACIFIC ISLANDER						
44.0000-5	HISPANIC						
44.0000-6	WHITE, NON-HISPANIC	18.00	26.00	3.00	2.00		
	45. SOCIAL SCIENCES						
45.0201	ANTHROPOLOGY		2.00	2.00	1.00		
45.0801	HISTORY	14.00	4.00	2.00	1.00	1.00	
45.1001	POLITICAL SCIENCE & GOVT.	17.00	7.00		1.00		
45.1101	SOCIOLOGY	2.00	5.00		1.00		
45.0000	TOTAL (SUM OF CODES 45.0101 - 45.9999)	33.00	18.00	4.00	4.00	1.00	

IS PART A APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF DEGREES CONFERRED BACHELORS DEGREES		MASTERS DEGREES		DOCTORS DEGREES	
		MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
RACIAL/ETHNIC BREAKDOWN ******							
45.0000-1	NON-RESIDENT ALIEN						
45.0000-2	BLACK, NON-HISPANIC	2.00	3.00		1.00		
45.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
45.0000-4	ASIAN OR PACIFIC ISLANDER						
45.0000-5	HISPANIC						
45.0000-6	WHITE, NON-HISPANIC	31.00	15.00	4.00	3.00	1.00	
	50. VISUAL AND PERFORMING ARTS						
50.0101	VISUAL & PERFORMING ARTS	4.00	2.00				
50.0501	DRAMATIC ARTS	1.00	5.00	2.00			
50.0703	ART HISTORY & APPRECIATION	0.00	1.00		2.00		
50.0901	MUSIC, GENERAL	8.00	5.00		3.00	1.00	
50.0000	TOTAL (SUM OF CODES 50.0101 - 50.9999)	13.00	13.00	2.00	5.00	1.00	
RACIAL/ETHNIC BREAKDOWN ******							
50.0000-1	NON-RESIDENT ALIEN						
50.0000-2	BLACK, NON-HISPANIC	1.00	1.00		1.00		
50.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE						
50.0000-4	ASIAN OR PACIFIC ISLANDER						
50.0000-5	HISPANIC						
50.0000-6	WHITE, NON-HISPANIC	12.00	12.00	2.00	4.00	1.00	
GRAND TOTAL, ALL BACHELORS, MASTERS, AND DOCTORS, DEGREES		769.00	710.00	126.00	167.00	42.00	23.00

PART B - FIRST PROFESSIONAL DEGREES CONFERRED IN SELECTED FIELDS

IS PART B APPLICABLE TO YOUR INSTITUTION? YES

CODE	DISCIPLINE SPECIALTY	NUMBER OF FIRST-PROFESSIONAL DEGREES CONFERRED	
		MEN	WOMEN
22.0101	LAW	113.00	36.00
	LAW (LL.B. OR J.D. DEGREE) - TOTAL	113.00	36.00
RACIAL/ETHNIC BREAKDOWN ******			
22.0000-1	NON-RESIDENT ALIEN	1.00	
22.0000-2	BLACK, NON-HISPANIC	3.00	1.00
22.0000-3	AMERICAN INDIAN OR ALASKAN NATIVE		
22.0000-4	ASIAN OR PACIFIC ISLANDER		1.00
22.0000-5	HISPANIC		
22.0000-6	WHITE, NON-HISPANIC	109.00	34.00

UNIVERSITY OF SOUTHERN MISSISSIPPI

DEGREES AWARDED REPORT

SEP 16 '86

TERM: FALL 1984-85
TERM CODE: 851

		HATTIESBURG	GULF PARK	NATCHEZ	ALL BRANCHES
UNDERGRADUATES	WHITE	348	25	5	378
	BLACK	37	0	1	38
	UNKNOWN	20	0	0	20
	TOTAL	419	26	6	451
GRADUATES	WHITE	77	14	0	91
	BLACK	6	0	0	6
	UNKNOWN	0	0	0	0
	TOTAL	91	14	0	105

UNIVERSITY OF SOUTHERN MISSISSIPPI

DEGREES AWARDED REPORT

SEP 16 '86

TERM: SPRING 1984-85
TERM CODE: 853

		HATTIESBURG	GULF PARK	NATCHEZ	ALL BRANCHES
UNDERGRADUATES	WHITE	795	58	5	858
	BLACK	99	4	3	106
	UNKNOWN	29	1	0	30
	TOTAL	939	63	8	1010
GRADUATES	WHITE	144	34	5	183
	BLACK	15	2	1	18
	UNKNOWN	2	3	0	5
	TOTAL	178	41	6	225

UNIVERSITY OF SOUTHERN MISSISSIPPI

DEGREES AWARDED REPORT

SEP 16 '86

TERM: SUMMER 1984-85
TERM CODE: 854

		HATTIESBURG	GULF PARK	NATCHEZ	ALL BRANCHES
UNDERGRADUATES	WHITE	406	52	7	465
	BLACK	62	3	2	67
	UNKNOWN	15	1	0	16
	TOTAL	504	57	9	570
GRADUATES	WHITE	290	56	10	356
	BLACK	19	4	0	23
	UNKNOWN	6	1	0	7
	TOTAL	331	62	10	403

For the requested period, the University of Mississippi at the Medical Center awarded a total of 1,798 degrees; 715 doctor of medicine degrees, 180 doctor of dental medicine degrees, 547 degrees in nursing; 311 degrees in the health related professions, and 45 graduate degrees in the medical sciences.

In the total of 1,798 degrees, 195 degrees or 10.85 per cent were awarded to minority students. Nonminority (white) graduates received 1,603 degrees or 89.15 per cent of the degrees awarded.

As separate groups within the total number of graduates, 153 black graduates received an average of 8.51 per cent of the degrees awarded for the five-year period. The remainder of the degrees were awarded to 42 other minority graduates (2.34 per cent), and to 1,603 white graduates (89.15 per cent).

Table I displays by year the number of degrees awarded, the number of degrees awarded to black graduates, other minority graduates, and white graduates. The requested percentages are included in the table.

TABLE I

Year	Total Degrees	Black No./Percent		Other Minority No./Percent		Nonminority(White) No./Percent	
1981-82	349	32	9.17	6	1.72	311	89.11
1982-83	340	22	6.47	9	2.65	309	90.88
1983-84	379*	25	6.60	12	3.17	342	90.23
1984-85	369	36	9.76	5	1.35	328	88.89
1985-86	361	38	10.53	10	2.77	313	86.70

* Includes 1 black medical school graduate whose degree was awarded retroactive to June 30, 1984, but after all reports for the 1983-84 academic year had been filed.

Within the minority groups of graduates for each program, black medical graduates, over the five-year period, were awarded 65.31 per cent of the degrees awarded to all minority graduates in the School of Medicine; black dental graduates received 61.54 per cent of the degrees awarded to all minority graduates in the School of Dentistry; black nursing graduates received 92 per cent of the degrees awarded to all minority graduates in the School of Nursing; black graduates in the health related professions received 91.67 per cent of the degrees awarded to all minority graduates in the School of Health Related Professions; and 10 per cent of the graduate degrees awarded to all minority students in the Graduate Program were received by blacks. Over the five-year period and within the total minority gorup of 195 graduates, black minority graduates from all programs received 78.46 per cent of the degrees and other minority gradates (Asian, Hispanic, American Indian, and Nonresident Aliens) received 21.54% of the degrees awarded to minority graduates by the University of Mississippi at the Medical Center.

Table II shows the cumulative number of degrees awarded by program; the number and percentage of degrees awarded to all minorities; the number and percentage of degrees awarded to nonminorities (white); and the number and percentage of degrees awarded to black minorities; and the number and percentage of degrees awarded to other minorities.

TABLE II

Program	Total Degrees	Minority No./Percent		Nonminority No./Percent		Black No./Percent		Other Minority No./Percent	
Nursing	547	50	9.14	497	90.86	46	8.41	4	.73
Health Related	311	72	23.15	239	76.85	66	21.22	6	1.93
Graduate	45	11	24.44	34	75.56	1	2.22	10	22.22
Medicine	715	49	6.85	666	93.15	32	4.48	17	2.37
Dentistry	180	13	7.22	167	92.78	8	4.44	5	2.78

An additional source of material for the response to this interrogatory is a set of commencement programs for these years which list the graduate by name and degree.